120-21

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1126.

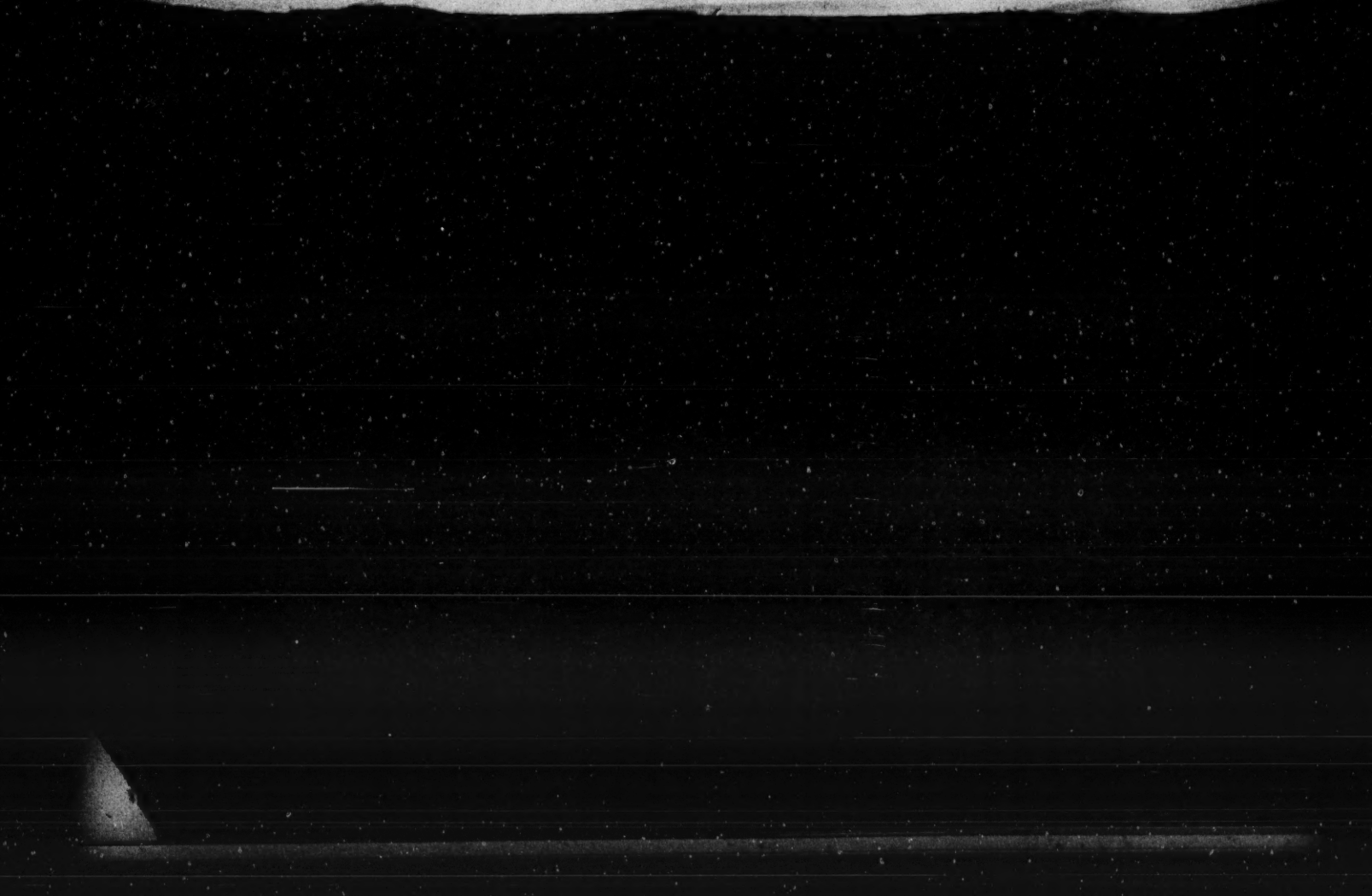
THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF IN ERROR,

vs.

LORETTA M. CRANDAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 12, 1886.



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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, on Tuesday, the twenty-sixth day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-six and of our Independence the one hundred and tenth year.

WM. H. BRADLEY, *Clerk.*

LORETTA M. CRANDAL
vs.
THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA. } Assumpsit. 19415.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the seventeenth day of January, 1885, came the plaintiff, by her attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, her bond for costs and declaration in said above-entitled cause, which said bond and declaration are respectively in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court. To the March Term, A. D. 1885.

2 LORETTA M. CRANDAL
vs.
THE ACCIDENT INSURANCE COMPANY. } In Assumpsit.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by her I hereby agree and stipulate that execution may issue against my property for any costs taxed against plaintiff.

Dated this 17th day of January, A. D. 1885.

GEO. C. FRY.

Endorsed: Filed Jan'y 17, A. D. 1885. Wm. H. Bradley, clerk.

3 *Declaration.*

Circuit Court of the United States, Northern District of Illinois.

CIRCUIT COURT OF THE UNITED STATES, *Seventh Judicial Circuit,* } *ss:*

Lorette M. Crandal, who is a citizen and resident of the State of Illinois, plaintiff in this suit, by George C. Fry and George S. House, *his* attorneys, complains of the Accident Insurance Company of

North America, a citizen of the province of Quebec, in the dominion of Canada, a corporation incorporated and doing business under and by virtue of the laws of said province, and having its principal place of business at Montreal, in said province of Quebec, defendant of a plea of trespass on the case upon promises—

For that, whereas the defendant heretofore, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and eighty-four, at said district, to wit, at the city of Chicago, in the State of Illinois, made its certain writing obligatory, commonly called a policy of insurance, and delivered the same to Edward M. Crandal, the assured therein named, and for the consideration therein expressed promised the plaintiff in the terms of the
4 said instrument in writing and conditions thereto annexed, which said instrument in writing and conditions thereunto annexed are in the words and figures following—that is to say:

"Amount, $10,000. Premium, $50.00.

"The Accident Insurance Company of North America. Deposited at Albany, N. Y., $100,000. Head office, Montreal.

"In consideration of the warranties made in the application for this insurance, and of the sum of fifty $\frac{00}{100}$ dollars, this company hereby insures Edward M. Crandal, by occupation, profession, or employment a president Crandal M'f'g Co., residing at Chicago, in the county of Cook and State of Illinois, hereinafter styled the insured, in the principal sum of ten thousand dollars for term of twelve months, ending on the twenty-third day of May, in the year of our Lord one thousand eight hundred and eighty-five, at 12 o'clock noon; the said sum insured to be paid to his wife, Lorette M. Crandal, or his legal representative, within thirty day- after sufficient proof that the insured at any time within the continuance of this policy shall have sustained bodily injuries, effected through external, accidental, and violent means within the intent and meaning of this contract and the conditions hereunto annexed, and such injuries
5 alone shall have occasioned death within ninety days from the happening thereof, or, if the insured shall sustain bodily injuries by means as aforesaid, which shall, independently of all other causes, immediately and wholly disable and prevent him from the prosecution of any and every kind of business pertaining to the occupation under which he is insured, then, on satisfactory proof of such injuries, he shall be indemnified against loss of time caused thereby in the sum of fifty dollars per week for such period of continuous total disability as shall immediately follow the accident and injuries as aforesaid, not exceeding, however, twenty-six consecutive weeks from the time of the happening of such accident. He is insured under classification preferred, but it is understood and agreed that in the event of his being either fatally injured or otherwise disabled in consequence of his engaging, temporarily or otherwise, in any act or occupation of a higher or more hazardous classification according to this company's tariff, or, if not specially mentioned in the company's tariff, approximating thereunto, this insur-

ance shall not be forfeited or voided, but he shall receive compensation to an amount proportionate to that which the premium
6 he has paid would insure him under such higher classification:

Provided always, That if this policy, or any renewal thereof, has been or shall be obtained through misrepresentation, fraud, or concealment, or if any fraudulent attempt shall be made to obtain any sum under this policy, then the same shall be absolutely void:

Provided always, That this insurance shall not extend to hernia, nor to any bodily injury of which there shall be no external and visible sign; nor to death or disability which may have been caused wholly or in part by bodily infirmities or disease, or by the taking of poison, or by any surgical operation or medical or mechanical treatment; and no claim shall be made under this policy when the death or injury may have been caused by duelling, fighting, wrestling, unnecessary lifting, or by overexertion, or by suicide, or by freezing, or sunstroke, or self-inflicted injuries, or by concealed weapons carried by the insured, or when the death or injury may have happened in consequence of war, riot, or invasion, or of riding or driving races, or of voluntary or unnecessary exposure to any obvious danger, hazard, or perilous adventure (unless in the
7 humane effort to save human life, or in the occasional temporary performance of any reasonable duty towards a fellow-creature, or in pursuance of or obedience to the reasonable requirements of an employer or superintendent), or of violating the rules of any company or corporation, or when the death or injury may have happened while the insured was or in consequence of his having been under the influence of intoxicating drinks, or taking part in gymnastic sports (except for amusement), or while engaged in or in consequence of any unlawful act or from assault provoked by quar[re]ling.

"And this insurance shall not be held to extend to misterious disappearances, nor to any case of death or disability, the nature, cause, or manner of which is unknown or incapable of direct and positive proof:

Provided always, That if the insured shall travel or be beyond or without the limits of travel and residence hereinafter prescribed without first obtaining from this company, or one of its agents, a "permit" and paying the extra premium therefor, then this policy shall be wholly void as to all accidents occurring beyond such limits. Said limits of travel and residence are as follows:

"The Dominion of Canada and Newfoundland and the
8 inhabited portions and civilized abodes of the United States of America and Mexico, and coastwise by regular lines of passenger or mail conveyance from port to port on the Atlantic or Pacific coast or Gulf of Mexico. The insured is permitted also, under the annual policies of this company, to travel to and from and reside in Europe without extra premium. No insurance is granted under this contract against any fatal or non-fatal injuries caused by hostile Indians:

Provided always, That all sums [which] may be paid by way of in-

demnity to the insured by virtue of this policy shall be accounted in diminution of the principal sum hereby insured, so that, in case of subsequent death or injury during the continuance of this policy and the year in which such indemnity may have been paid, the total amount to be paid by the said company shall not in any case exceed the principal sum hereby insured.

This policy is subject also to the following:

1. The insured shall use due diligence for personal safety and protection. In the event of any accident happening to him immediate notice shall be given in writing to this company at Montreal, or to the agent who countersigned his policy, stating the full particulars of the accident; and failure to give such notice shall invalidate all claims under this policy, and unless direct and affirmative proof of the death or duration of total disability be furnished within seven months from the happening of the accident then all claims under this policy shall be waived and forfeited to the company.

2. No suit or proceeding at law or in equity shall be brought to recover any sum hereby insured unless the same is commenced within one year from the time the right of action accrues.

3. The insured shall not be entitled to indemnity for disabling injuries beyond the amount of his ordinary wages, salary, or the money value of his time (with power to the directors to remit the condition) during the period of continuous disability, not exceeding twenty-six weeks, as aforesaid.

4. No claim shall be payable under this policy unless timely and sufficient notice has been given the company, whereby any medical adviser of the company shall be able to examine the person of the insured in respect of any alleged injury or cause of death, and the company's medical adviser shall be allowed to see and examine the injury when and so often as may be reasonably required on behalf of the company.

5. The risk taken by this company on any one life is limited to six thousand dollars, and fifty dollars weekly indemnity, and no insurance to any further amount in this company, whether effected by policy or ticket, shall hold good against the company.

6. If the company shall so elect, this policy may be cancelled at any time by refunding to the insured the premium paid by him, less a *pro rata* part thereof for the time said policy has been in force.

7. The actual payment of premiums by the insured before the happening of any accident under which claim for loss may be made, as well as all the provisions and conditions aforesaid, and a strict compliance therewith during the continuance of this policy are conditions precedent to the making of this contract, and no waiver shall be claimed by reason of the act or acts of any local agent unless such act or waiver be specially authorized in writing over the signature of the president or secretary of this company.

8. This policy is issued only upon the express condition that the person or persons, if other than the insured, who have procured this insurance from this company shall be deemed the agent or agents

of the insured and not of this company in any transaction relating to this insurance.

In witness whereof The Accident Insurance Company of
11 North America has caused these presents to be signed by its president and secretary and delivered at the head office in the city of Montreal and this policy countersigned by Wheeler & Gaylord, agents of this company at Chicago, Ills.

Attestation: A. T. GALT, *President.*
E. RAWLINGS, *Secretary.*

Countersigned at Chicago this 23rd day of May, 1884.
WHEELER & GAYLORD, *Agents.*

To which said instrument in writing there was attached, at the time of its delivery to the said Edward M. Crandal, as a part and parcel and constituting a part of said instrument in writing, the following—that is to say:

"Condition 5 of this policy is hereby amended, and the limit of insurance is increased from $6,000 to $10,000. Montreal, August, 1883. E. Rawlins, secretary. (To be attached to the policy.)"

And which said instrument in writing, at the time of the said delivery of the same to the said Edward M. Crandal, had thereon the following endorsement, to wit:

"The Accident Insurance Company of North America. Policy on the life of Edw. M. Crandal. Number 70,897. Date, May 23d, 1884. Term of 12 months. Amount insured, $10,000. Weekly indemnity, $50. Premium, $50.

"Notice respecting assignments.—The principal sum insured herein can be assigned only by the person or persons to
12 whom it is by the term of the policy made payable, and such principal sum is always subject to diminution to the extent of the weekly indemnity paid to the insured. The weekly indemnity herein insured can be assigned only by the person whose life is insured. A copy of every assignment must be given to the company within thirty days after execution. Any claim under this policy made by an assignee shall be subject to proof of interest.

"Classification referred to in the policy.—Class No. 1. 'Preferred.' Rate, $5.00 per $1,000 insurance and $5.00 weekly indemnity, or $3.00 per $1,000 for death only; $3.00 for $5.00 indemnity only.

"Class No. 2. 'Inter-ordinary.' Rate, $6.00 per $1,000 insurance and $5.00 weekly indemnity, or $3.60 per $1,000 for death only; $3.60 for $5.00 indemnity only.

"Class No. 3. 'Ordinary.' Rate, $7.50 per $1,000 insurance and $5.00 weekly indemnity, or $4.50 per $1,000 for death only; $4.50 for $5.00 indemnity only.

"Class No. 4. 'Extraordinary.' Rate, $8.00 per $1,000 insurance and $5.00 weekly indemnity, or $5.00 per $1,000 for death only; $5.00 for $5.00 indemnity only.

"Class No. 5. 'Medium.' Rate, $10.00 per $1,000 insurance and $5.00 weekly indemnity, or $6.00 per $1,000 for death only; $6.00 for $5.00 indemnity only.

13 "Class No. 6. 'Special.' Rate, $12.50 per $1,000 insurance and $5.00 weekly indemnity, or $7.50 per $1,000 for death only; $7.50 for $5.00 indemnity only.

"Class No. 7. 'Hazardous.' Rate, $15.00 per $1,000 insurance and $5.00 weekly indemnity, or $9.00 per $1,000 for death only; $9.00 for $5.00 indemnity only.

"Class No. 8. 'Engineers' class. Rate, $16.00 per $1,000 insurance and $5.00 weekly indemnity, or $9.60 per $1,000 for death only; $9.60 for $5.00 indemnity only.

"Class No. 9. 'Extra hazardous.' Rate, $20.00 per $1,000 insurance and $5.00 weekly indemnity, or $12.00 per $1,000 for death only; $12.00 for $5.00 indemnity only.

"Class No. 10. 'Special hazardous.' Rate, $25.00 per $1,000 insurance and $5.00 weekly indemnity, or $15.00 per $1,000 for death only; $17.50 for $5.00 indemnity only.

"Class No. 11. 'Extra special hazardous.' Rate, $30.00 per $1,000 insurance and $5.00 weekly indemnity, or $18.00 per $1,000 for death only; $21.00 for $5.00 indemnity only.

"Class No. 12. 'Special contract.'"

And the plaintiff avers that at the time of the making of the said policy of insurance and thence hitherto until the death of the said Edward M. Crandal, hereinafter mentioned, she, the said plaintiff, was the lawful wife of said Edward M. Crandal.

14 And the plaintiff further avers that during the continuance of said policy, to wit, on the seventh day of July, A. D. 1884, the said Edward M. Crandal sustained bodily injuries effected through external, accidental, and violent means within the intent and meaning of the said policy of insurance and the conditions thereunto annexed.

And the plaintiff avers that by reason of the said injuries so by the said Edward M. Crandal sustained as aforesaid the said Edward M. Crandal afterwards and during the continuance of the said policy of insurance died, to wit, on the day and year last aforesaid, to wit, at the district aforesaid.

And the plaintiff further avers that the said injuries so as aforesaid sustained by the said Edward M. Crandal alone caused the death of the said Edward M. Crandal within ninety days from the happening thereof, to wit, on the seventh day of July, A. D. 1884.

And the plaintiff further avers that the said Edward M. Crandal did in fact make the payment of the premium mentioned in the said policy of insurance to the said defendant before the happening of the said accident to the said Edward M. Crandal, to wit, on the sixth day of June, A. D. 1884, to wit, at the district aforesaid.

15 And the plaintiff further avers that upon the happening of the said accident to the said Edward M. Crandal immediate notice was given in writing to the agents of the said defendant, who countersigned the said policy of insurance, stating the full particulars of the said accident.

And the plaintiff further avers that proof of the said injuries and death of the said Edward M. Crandal was made to the defendant

more than thirty days prior to the commencement of this suit, to wit, on the thirty-first day of July, A. D. 1884.

And the plaintiff further avers that although she has kept and performed, and the said Edward M. Crandal did in his lifetime also keep and perform, all things in the said policy contained on their part to be kept and performed, nevertheless the defendant, though often thereunto requested, has not paid the plaintiff the said ten thousand dollars or any part thereof, but refuses so to do.

Second count. And whereas, also, the defendant afterwards, to wit, on the twenty-third day of May, A. D. 1884, at Chicago, to wit, at said district, for the consideration therein expressed, made, executed, and delivered to one Edward M. Crandal its certain other instrument in writing, commonly called a policy of insur-
16 ance, bearing date the day and year last aforesaid, and containing the like terms, stipulations, and endorsements thereon as were and are contained in the policy of insurance set forth in plaintiff's first count.

And the plaintiff avers that at the time of the making of the said policy of insurance and thence, hitherto, and until the death of said Edward M. Crandal, hereinafter mentioned, she was the lawful wife of the said Edward M. Crandal.

And the plaintiff avers that afterwards and within the continuance of the said policy of insurance, to wit, on the seventh day of July, A. D. 1884, the said Edward M. Crandal did sustain bodily injuries effected through external, accidental, and violent means and which said injuries by him, the said Edward M. Crandal, so sustained alone caused the death of said Edward M. Crandal within ninety days from the happening thereof, to wit, on the day and year last aforesaid, to wit, at the district aforesaid.

And the plaintiff further avers that the said Edward M. Crandal did in fact make the payment of the premium mentioned in the said policy of insurance to the said defendant before the hap-
17 pening of the said accident to the said Edward M. Crandal, to wit, on the sixth day of June, A. D. 1884, to wit, at the district aforesaid.

And the plaintiff further avers that immediately upon the happening of the said injuries to the said Edward M. Crandal the plaintiff gave notice in writing to the Messrs. Wheeler & Gaylord, the agents of the said defendant, who countersigned the said policy, stating the full particulars of the said accident, to wit, on the day and year last aforesaid, to wit, at the district aforesaid.

And the plaintiff further avers that she, the said plaintiff, did afterwards and within seven months from the happening of the said accident, and more than thirty days prior to the commencement of this suit, to wit, on the thirty-first day of July, A. D. 1884, to wit, at the district aforesaid, furnish direct and affirmative proof of the death of the said Edward M. Crandal to the said defendant.

And the plaintiff avers that at the time the said Edward M. Crandal sustained his said injuries he, the said Edward M. Crandal, was not engaged, temporarily or otherwise, in any act or occupation of a higher or more hazardous classification than the classification

18 under which the said Edward M. Crandal was insured under the said policy of insurance.

The plaintiff further avers that the said policy of insurance was not obtained through misrepresentation, fraud, or concealment, and that no fraudulent attempt has been made to obtain any sum under the said policy of insurance.

And the plaintiff further avers that the death of the said Edward M. Crandal was not caused by hernia or by any injury of which there was no external and visible sign, nor wholly or in part by bodily infirmity or descease, or by the taking of poison, or by any surgical operation, or medical or mechanical treatment, or by dueling, fighting, wrestling, unnecessary lifting, over-exertion, suicide, freezing, sunstroke, self-inflicted injuries, or by concealed weapons carried by the said insured, or in consequence of war, riot, invasion, or of riding or driving races, or of voluntary or unnecessary exposure to any obvious danger, hazardous or perilous adventure, or of violating the rules of any company or corporation, or while the said insured was, or in consequence of his having been, under the influence of intoxicating drinks, or taking part in gymnastic sports, or while engaged in or in consequence of any unlawful act,

19 or from assault provoked by quar-ling, or from injuries caused by hostile Indians, or while the said insured was beyond or without the limits of travel and residence prescribed in the said policy of insurance.

And although the said Edward M. Crandal, in his lifetime, and the said plaintiff, since the death of said Edward M. Crandal, have performed, fulfilled, and kept all things in the said policy of insurance and stipulations and conditions thereunto annexed, according to the form and effect of the said policy of insurance, and although the principal sum in the said policy of insurance has become due and payable in the manner aforesaid, nevertheless the defendant, though often thereunto requested so to do, has not yet paid the same to the plaintiff or any part thereof, but refuses so to do; wherefore the plaintiff says that she is injured and has sustained damage to the amount of fifteen thousand dollars, and therefore she brings her suit, etc.

GEO. C. FRY AND GEO. S. HOUSE,
Attorneys for Plaintiff.

Endorsed: Filed Jan'y 17, 1885. Wm. H. Bradley, clerk.

20 On the same day, to wit, on the seventeenth day of January, 1885, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

Circuit Court of the United States of America, Northern District of Illinois, *ss:*

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon The Accident Insurance Company of North America, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto Loretta M. Crandal of a plea of trespass on the case upon premises to her damage, as it is alleged, of fifteen thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 17th day of January, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

21 I have served the within writ on the Accident Insurance Company of North America by reading this writ to F. C. Wheeler, agent of said company, and by delivering a true copy of this writ to F. C. Wheeler on the 23rd of January, 1885.

A. M. JONES,
U. S. Marshal.
R. D. SHERMAN, *Dpt.*

Endorsed: Filed Jan'y 29, A. D. 1885. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-third day of February, 1885, came the defendant, by its attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the United States Circuit Court, Northern District of Illinois.

THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA *ats.* LORETTA M. CRANDAL. } Assumpsit.

And the defendant, by Thomas Bates, its attorney, comes and defends the wrong and injury, when, &c., and says that it did not promise in manner and form as the plaintiff has above thereof complained against it; and of this it puts itself upon the country, &c.

22 THOMAS BATES,
Def't's Att'y.

Endorsed: Filed Feb'y 23, 1885. Wm. H. Bradley, clerk.

Afterwards, to wit, on the thirtieth day of January, 1886, in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Order.

LORETTA M. CRANDAL
vs.
THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA. } Assumpsit.

Now come the parties, by their attorneys, and, upon issue joined herein, thereupon comes a jury of good and lawful men, to wit: L. M. Hollister, W. W. Clemens, James R. Hugunin, N. R. Douglas, J. N. Williamson, E. O. Clark, H. L. Bush, John Finney, John M. Rhodes, F. S. Hatch, Dudley W. Day, and E. W. Farrar, who were all duly elected, tried, and sworn well and truly to try said issue, and, after hearing the evidence on the part of the plaintiff, the defendant, by its attorney, moves the court to instruct the jury to return a verdict for the defendant; and the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed to Tuesday morning next.

23 Afterwards, to wit, on the second day of February, 1886, in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Order.

LORETTE M. CRANDAL
vs.
THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and the motion of the defendant to instruct the jury to return a verdict for the defendant now coming on to be heard, the plaintiff, by her attorney, moves the court that, before considering or arguing the motion of the defendant to take away the cause from the determination of the jury, the defendant be required to file a demurrer, in writing, to the evidence introduced by the plaintiff tending to prove and maintain the issues herein, and to file the facts proven by the plaintiff in the evidence submitted by her herein, together with all the reasonable inferences and conclusions therefrom that might be legally drawn or found by the jury, and the court, being now fully advised upon said two motions of the plaintiff, overrules the same, to which the plaintiff, by her attorney, now excepts; and, after hearing the arguments of the counsel upon said motion of the defendant for the court to instruct the jury to return a verdict for the defend-
24 ant, the court, being now fully advised, thereon overrules the same; and, after hearing the concluding evidence herein

and the arguments of the counsel, the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed until to-morrow morning.

Afterwards, to wit, on the third day of February, 1886, in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Order.

LORETTE M. CRANDAL
vs.
THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and after receiving the instructions of the court the jury retired to consider of their verdict, and after a short absence the jury returned into court the following special verdict:

1st Question. Did Edward M. Crandal, on the 23rd day of May, 1884, make to the defendant company the application for accident insurance which is in evidence?

Answer. Yes.

2d Question. Did the defendant company, on the 23d day of May, 1884, issue to Edward M. Crandal the policy of insurance in evidence, insuring him against death from bodily injuries
241/2 effected through external, accidental, and violent means and based upon the application before mentioned?

Answer. Yes.

3d Question. Were the premiums which accrued upon the policy prior to the death of Edward M. Crandal fully paid, and was the policy in force at the time of his death?

Answer. Yes.

4th Question. Did Edward M. Crandal hang himself on the 7th day of July, 1884, and did that act result in his death on that day?

Answer. Yes.

5th Question. Was Edward M. Crandal sane or insane at the time of the act of self-destruction?

Answer. He was insane.

6th Question. Were notices of the death of Edward M. Crandal and proofs of death loss duly given and furnished by the beneficiary named in the policy to the defendant company?

Answer. Yes.

And if upon the foregoing facts so found the court is of opinion as matter of law that the plaintiff is entitled to recover, then we find the issue in favor of the plaintiff, and assess her damages at the sum of $10,853.33. If as matter of law the court is of opinion that defendant is not entitled to recover, then we find the issue in favor of the defendant.

Afterwards, to wit, on the twenty-sixth day of March, 1886, there was filed in said clerk's office the opinion of Judge Dyer in said entitled cause, which said opinion is in the words and figures following, to wit:

25 *Opinion.*

United States Circuit Court, Northern District of Illinois.

LORETTE M. CRANDAL

vs.

THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA.

DYER, *J.:*

On the 23rd day of May, 1884, the defendant company issued to Edward M. Crandal, since deceased, an accident policy of insurance, by which it promised to pay to the plaintiff, who was the wife of the insured, the sum of ten thousand dollars within thirty days after sufficient proof that the insured at any time within the continuance of the policy had sustained bodily injuries effected through external, accidental, and violent means, within the intent and meaning of the contract and the conditions thereunto annexed, and such injuries alone had occasioned death within ninety days from the happening thereof. It was provided in the policy that the insurance should not extend to death or disability "which may have been caused wholly or in part by bodily infirmities or disease." Further, that no claim should be made under the policy if the death should be caused by suicide or self-inflicted injuries.

While this policy was in force, the insured, Edward M. Cran-
26 dal, took his own life by hanging, and the jury to whom the case was submitted for a special verdict on the facts has found that at the time of the act of self-destruction he was insane. The question reserved for consideration by the court and now to be determined is whether the death was one covered by the policy. The question of liability, as it here arises upon an accident policy of insurance, seems to be one of first impression. Unaided by direct authority the court is called on to determine, first, whether under such a policy as this death from self-destruction, occurring when the insured is insane, may be said to have been caused by bodily injuries effected through accidental means. This question, it will be understood, is here to be considered quite independently of the question whether disease or physical infirmity was a promoting cause of death.

The verdict of the jury was unquestionably right. The cause was one in which the evidence clearly established the fact of insanity. The symptoms of a disordered mind were manifested in the countenance, conduct, and conversation of the insured. He was sleepless, was sometimes unduly excited, then unnaturally depressed. He suffered to such an extent from melancholy that he abandoned his accustomed habits and pursuits. Fondness for family and friends changed to indifference, and, in short, his reasoning powers and self-control appear to have been prostrated by the fear of want
26½ and by morbid impulses and delusions, such as in this species of insanity impel to self-destruction. Upon the facts shown

the jury might well find that his judgment, his volition, [and] his will were overthrown, so that, in the language of Mr. Justice Nelson, when chief justice of New York, in the case of Breasted *vs.* Farmers' L. & T. Co., 4 Hill, 73, 75, "the act of suicide was no more his act, in the sense of the law, than if he had been impelled by irrisistible physical power." Upon the verdict and the facts which sustain it, it may then be assumed that when the deceased took his life it was not his voluntary, rational act. He could not exercise his natural powers of volition, and thereby control his judgment upon the act he was about to commit. The physical violence therefore which terminated his life was the same as if it had come upon him from sources outside of himself and for which he was not responsible. It was force emanating not from the brain and hand of Edward M. Crandal as a responsible, voluntary agent, but force which was uncontrollable, so far as he was concerned. The means employed to produce death were external and violent. Were they not also, in a just and true sense, accidental, if the deceased was so far bereft of his reasoning faculties that his act was not the result of his will or of a voluntary operation of his mind? If, in consequence of his condition of irresponsibility, the violence which he inflicted
27 upon himself was the same as if had operated upon him from without, then why was not the death an accident within the definition of that term as given by Bouvier, namely, "An event which, under the circumstances, is unusual and unexpected by the person to whom it happens; the happening of an event without the concurrence of the will of the person by whose agency it was caused?"

No case has been cited where the question as here presented was directly in judgment, but there are *dicta* which afford some aid in reaching a conclusion. In 7 Amer. Law Review, 587, 588, various definitions of an accident, as the term is used in insurance policies, are given, namely: "An accident is any event which takes place without the oversight or expectation of the person acted upon or effected by the event."

Ripley *v.* R'y Passengers' Ins. Co., 2 Bigelow's Cases, 758; Providence Life Ins. Co. *v.* Martin, 32 Md., 310. It is "any unexpected event which happens as by chance or which does not take place according to the usual course of things."

N. Amer. Ins. Co. *v.* Burroughs, 69 Pa. St., 43. It is "something which takes place without any intelligent or apparent cause, without design, and out of course." Mallory *v.* Travelers' Ins. Co., 47 N. Y., 52. "Some violence, casualty, or *vis major* is necessarily involved" in the term accident. It means, in short, in insurance policies an injury which happens by reason of some violence, casualty, or *vis major* to the assured without his design or consent
28 or voluntary co-operation." Similar definitions are given by Mr. Justice Paine in his discussion of the question in Schneider *v.* Ins. Co., 24 Wis., 30.

In Schneider *v.* Ins. Co., 58 Wis., 14, it was alleged in the pleading that while the insured, who was traveling in a railway car, "was in a dazed and unconscious condition of mind, and not know-

ing or realizing what he was doing, he involuntarily arose from his seat and walked unconsciously to the platform of the car and fell therefrom to the ground;" and it was held that this constituted a good cause of action upon a policy of accident insurance. Here, it is true, the injury resulted from falling from the car; but, since the moving cause was the involuntary act of leaving the seat and walking to the platform, the case suggests the inquiry if, for example, a person in a fit of somnambulism or in a delirium, not knowing or realizing what he is doing, involuntarily inflicts injury upon himself—that is, by means of his own hand—and death ensues, is not such an injury as much the result of accident as if in the same circumstances the injury results from other external forces, such as falling from the platform of a moving train?

In Hill *vs.* Ins. Co., 22 Hun., 189, the insured took poison by mistake and died suddenly. The court said that death occurred through accidental means. The taking of the poison was not the result of the will or intention of the person, and was there-
29 fore not his voluntary act. It was adjudged, however, that the plaintiff could not recover on the ground that the policy contained a clause that the company should not be liable if death should be caused by taking poison. And this clause was held to exempt the company from liability, whether the poison was taken intentionally or by mistake. In Pierce *v.* Travelers' Ins. Co., 34 Wis., 395, Mr. Chief Justice Dixon, speaking for the court in interpreting the clause in the policy in question in that case, referred to instances of death resulting from an act committed under the influence of delirium, as if the person should, in a paroxysm of fever, precipitate himself from a window, or, having been bled, remove the bandages, or should take poison by mistake, and observed that "deaths thus produced are more properly denominated deaths by accident than deaths by suicide. * * * Deaths so caused are held to be deaths by accident within the meaning and purpose of policies of insurance against accident, as where a man negligently draws a loaded gun towards him by the muzzle or the servant fills the lighted lamp with kerosene and the gun is discharged and the lamp explodes." In Horn *v.* Life Ins. Co., 7 Jur. (N. S.), 673, the court in passing upon the question whether a policy of insurance upon life is rendered void by the suicide of the insured when insane, speaks of such a death as just as much an accident as if the insured had fallen from the top of a house.

30 In Breasted *v.* Farmers' L. & T. Co., 8 N. Y., 306, it was observed by the court that "a death by accident and a death by the party's own hand, when deprived of reason, stand on principle in the same category. In both cases the act is done without a controlling mind."

To maintain the position that because his own hand constituted the violent means employed by the insured in taking his life, those means were not external and accidental, it is necessary to take a distinction between force emanating from the insane person himself and force operating independently from without. I can hardly think there is ground for such a distinction. The injury and the

death seem equally fortuitous in both cases, for in neither case is there a concurring will which prompts the act. An insane man burns his own insured property; the insurer is nevertheless liable from loss unless its contract expressly exempts it from liability even in case of such a burning; this for the reason that the act was not voluntary or done with the assent, procurement, or design of the assured as a rational person. Karow *v.* Continental Ins. Co., 57 Wis., 56.

Although in the darkness that enveloped his mind the hand of Edward M. Crandal adjusted the fatal noose, the act was no more attributable to his voluntary agency than if, as a sane man walking the street in the darkness of night, the same fatality without
31 co-operation on his part, or even consciousness of danger had overtaken him. Therefore it would seem that in the one case as in the other the death would be attributable to casualty.

It is to be observed that in the policy in suit the company declares that it incurs no liability in case of death from suicide or self-inflicted injuries. Thus it appears that the insurer took into consideration the possibility that the insured might voluntarily and with deliberate intent—that is, as a sane person—take his life; and in such case the death was not to be regarded as covered by the contract, because not effected by accidental means. This is the import of this clause in the policy, but no provision is made against suicide when insane, and this adds force to the view that the contract is fairly open to the construction contended for by the plaintiff. By the term "self-inflicted injuries," as used in the policy, was not meant injuries inflicted by the insured upon himself when insane, but injuries self-inflicted when capable of rational, voluntary action.

Several cases have been cited by counsel for the defendant. Among them is Harris *v.* The Travelers' Ins. Co., decided by the superior court of Chicago in 1868, and referred to in Amer. Law Review, vol. VII, page 589; but the point here involved does not seem to have been there raised. The deceased was a fireman who was
32 accidentally buried under a falling wall, but was soon rescued without apparent injury, and continued his work for three months, when he took poison. In a suit to recover the insurance on the ground that the accident rendered him insane, it was held that if he was insane he was insane on account of the accident, [and] the death was too remote to be covered by the policy, which included only approximate results. It would seem that the plaintiff relied upon the original accident as a ground of recovery, and that was held too remote. Another case cited is Pollack *v.* U. S. Mutual Accident Association, 28 Albany Law Jour., 518. But all that was decided in that case was that the defendant was not liable for a death by poison, because the contract so expressly provided, and in view of that provision it made no difference whether the poison was innocently or intentionally taken. There was no question of insanity involved, and, moreover, the death was not caused by "external violence," and this was one of the prerequisites to recovery as fixed in the contract. In Bayless *v.* Travelers' Ins. Co., 14 Blatch., 144, the question of insanity did not arise, and it [is] on the same line,

in principle, with Pollack *v.* U. S. Mutual Accident Association, *supra.*

On the whole, my conclusion is that the death of the insured, Edward M. Crandal, resulted from bodily injuries effected through external, accidental, and violent means within the meaning of the policy in suit.

33 Second. Still another and equally interesting question remains to be determined. The contention of the defendant is that death in this case was caused by bodily infirmities or disease, namely, the insanity of the insured, and therefore that the plaintiff cannot recover. As has been observed, the policy provides that the company shall not be liable if the death be "caused wholly or in part by bodily infirmities or disease." The policy further recites that it is issued in consideration of the warranties made in the application for insurance and of the premium paid, and in the application signed by the insured he makes certain statements of facts usual in such cases, the last of which, numbered 15, is as follows: "I am aware that this insurance will not extend to * * * any bodily injury, happening directly or indirectly in consequence of disease, nor to death or disability caused wholly or in part by bodily infirmities or by disease, * * * nor to any case except when the accidental injury shall be the proximate and sole cause of disability or death." This is not a warranty of any fact. It is in effect merely an admission of knowledge on the part of the insured of such limitations of liability as may be declared in the policy. As therefore it is to the policy we must look for those limitations, it is observable that the policy does not declare that the insurance shall not extend to

34 any bodily injury "happening directly or indirectly in consequence of disease," but only that it shall not extend "to death or disability which may have been caused wholly or in part by bodily infirmities or disease." This, then, is the limitation of liability to be considered, as it is expressed in the policy issued and delivered subsequently to the application for insurance rather than the statements on the subject contained in the application. The 15th clause in the application is not referred to in the policy. Wherein, therefore, it differs from the written contract it is no part of the contract.

The argument of counsel for the defendant is, in brief, that insanity is a bodily infirmity or disease; that in ordinary life insurance cases it is regarded and characterized by the courts as a disease, and therefore it is that insurance companies are held liable in cases of suicide when the insured was insane; further, that in the case in hand the act of self-destruction was occasioned by the insanity, and so that within the meaning of the policy the death was caused by disease.

I was much impressed with the force of this argument, and if I may use the language of Denman, J., in a case hereafter referred to—"but for Winspear *v.* Accident Ins. Co., 6 Q. B. Div. 42, I am not sure but that I should have thought the company were protected."

It is true that in cases upon life policies death by an insane

35 suicide is regarded by the courts as death by disease. As it is expressed in Eastabrook *v.* Union Mut. Life Ins. Co., 54 Me., 224, "death by disease is provided for by the policy. Insanity is a disease. Death which is the result of insanity is death by disease." It is to be borne in mind, however, that these and similar observations are made in a class of cases where the insurance is not special, but general, and where the protection which it is intended to afford covers all diseases and disorders, other than those which may be specially excepted, which result in death. In the case of a life policy it may not matter whether the disease of insanity or the particular act of self-destruction be regarded as the immediate cause of death. It is the life which is insured and liability arises when death occurs, unless the death is within one of the specially excepted cases enumerated in the policy. The fact, therefore, that in such cases it is said that death which is the result of insanity is death by disease does not reach the question we have here, which is, What under the provisions of a policy which covers accident only was the death? In the sense of the clauses on the subject in this policy, was the death caused by disease or by the act of violence in question? Although the words of the policy are "caused wholly or in part by bodily infirmities or disease," I suppose the true inquiry is, what was the actual proximate cause of death, for in law there is but one cause. That is the proximate cause, which may either directly or in-

36 directly produce the result. If the death was caused in part by disease the disease must have been a proximate cause of death.

"One of the most valuable *criteria* furnished by the authorities," says Mr. Justice Miller in Ins. Co. *v.* Tweed, 7 Wall., 44, "is to ascertain whether any new cause has intervened between the fact accomplished and the alleged cause. If a new force or power has intervened of itself sufficient to stand as the cause of the misfortune the other must be considered as too remote." In Ins. Co. *v.* Transportation Co., 12 Wall., 199, it was said by Mr. Justice Strong:

"There is undoubtedly difficulty in many cases attending the application of the maxim '*proxima causa non remota spectatur*,' but none when the causes succeed each other in order of time. In such cases the rule is plain. When one of the several successive causes is sufficient to produce that effect the law will not regard an antecedent cause of that cause or the '*causa causans*.' In such a case there is no doubt which cause is the proximate one within the meaning of the maxim. But when there is no order of succession in time—when there are two concurrent causes of a loss—the predominating efficient one must be regarded as the proximate when the damage done by each cannot be distinguished."

The cases most nearly in point upon the question here in judg-

37 ment are Reynolds *vs.* The Accidental Ins. Co., Law Times Rep. (N. S.), 820; Winspear *v.* The Accident Ins. Co. (Limited), 6 L. Rep. (Q. B. Div.), 42; Lawrence *v.* The Accidental Ins. Co. (Limited), 7 L. Rep. (Q. B. Div.), 216, and Schaffer *v.* R. R. Co., 105 U. S., 249.

Although it may extend this opinion to greater length than is desirable, it seems necessary to give attention to these cases somewhat in detail.

In the Reynolds case the facts were that Thomas Humphry effected with the defendant company "a policy of insurance, whereby it was declared that if during the continuance of such policy the said Thomas Humphry should receive or suffer bodily injury from any accident or violence in case such accident or violence should cause the death of the said Thomas Humphry within three calendar months after the occurrence of such accident or violence, the full sum of three hundred pounds should be payable to the personal representatives, &c. * * * Provided also, and it is hereby expressly agreed and declared, that no claim shall be payable by the said company under the policy, in respect of death or injury by accident or violence, unless such death or injury shall be occasioned by some external and material cause operating upon the person of the said insured, and unless in the case of death as aforesaid such death shall take place from such accident or violence within three calendar months," &c.

It appeared that Humphry, while the policy was in force, went into the sea to bathe. While in a pool about one foot
38 deep he became suddenly insensible from some unexplained internal cause, and fell into the water with his face downwards. A few minutes afterwards he was found lying dead with his face in the water, and water escaped from his lungs in such a manner as to prove that he had breathed after falling into the water. The question for the opinion of the court was whether the death of Humphry occurred in a manner entitling the plaintiff, as his executor, to receive the sum of three hundred pounds under or by virtue of the policy. Bosanquet, for the defendant, argued that "if a man is pushed into the water, or forcibly held down in it, his death then results from violence within the meaning of the policy. If a man accidentally falls into water and is drowned, his death results from accident; but if a man falls down in a fit in a shallow pool and is drowned, his death is the result, not of of accident or of violence, but of the fit, even though the immediate cause of the death be, as here, suffocation by drowning." Willes, J., said "in this case the death resulted from the action of the water on the lungs, and from the consequent interference with respiration. I think that the fact of the deceased falling in the water from sudden insensibility was an accident, and consequently that our judgment must be for the plaintiff." It is to be observed of this case that it has only a general application to the question under consideration, because the proviso in
39 the policy contained no such condition as we have here in relation to disease as a cause, in whole or in part, of death.

In the Winspear case the facts were that W. effected an insurance with the defendants against accidental injury, and, by the terms of the policy, the defendants agreed to pay the amount insured to W.'s legal representatives should he sustain "any personal injury caused by accidental, external, and visible means," and the direct effect of such injury should cause his death. The policy also contained a

proviso that the insurance should not extend "to any injury caused by or arising from natural disease or weakness, or exhaustion consequent upon disease, * * * or to any death arising from disease, although such death may have been accelerated by accident. During the time the policy was in force, and whilst W. was crossing a stream, he was seized by an epileptic fit and fell into the stream and was drowned whilst suffering from the fit, but he did not sustain any personal injury to occasion death other than drowning.

Here it was argued that there would have been no drowning had the insured not had an epileptic fit; that it was the fit that caused the drowning, and that the death therefore was from an injury caused by the fit. Just as it is argued in the case at bar that there would have been no suicide had the insured not been insane; that it was the insanity which caused the suicide, and that therefore the death was from an injury caused by insanity. But Lord Coler-
40 idge, C. J., said: "I am of opinion that this judgment should be affirmed, and that on very plain grounds. It appears to be clear, from the statement in this case, that the insured died from drowning in the waters of the brook whilst in an epileptic fit, and drowning has been decided to be an injury, because, in the words of this policy, caused by accidental, external, and visible means." I am therefore of opinion that the injury from which he died was a risk covered by this policy, and the only question then remaining is whether the case is within the proviso, which provides that the insurance shall not extend to death by suicide, whether felonious or otherwise, or to any injury caused by or arising from natural disease, or weakness or exhaustion consequent upon disease. It is certainly not within the first part of this proviso, because the death was not so occasioned. Neither does it appear to me that the cause of death was within the latter words of the proviso. The death was not caused by any natural disease or weakness, or exhaustion consequent upon disease, but by the accident of drowning.

I am of opinion that those words in the proviso mean what they say, and that they point to an injury caused by natural disease, as if, for instance, in the present case epilepsy had really been the cause of the death. The death, however, did not arise from any such cause, and those words have no application to the case, and
41 therefore the judgment of the exchequer division must be affirmed."

This case, in its facts and upon principle, appears to be directly in point, for if there the death was not in a legal sense caused by the fit, but by the drowning, so here it was not caused by the insanity or disease, but by the act of self-destruction.

In the case of Lawrence there was a policy of insurance against death from accidental injury, which contained the following condition: "This policy insures payment only in case of injuries accidentally occurring from material and external cause operating upon the person of the insured where such accidental injury is the direct and sole cause of death to the insured; * * * but it does not insure in case of death arising from fits * * * or any disease whatever arising before or at the time, or following such accidental

injury (whether consequent upon such accidental injury or not, and whether causing such death directly or jointly with such accidental injury)." The insured, while at a railway station, was seized by a fit and fell off the platform across the railway, and an engine and carriages passed over his body and killed him. The falling forward of the insured off the platform was in consequence of his being seized with a fit or sudden illness, and but for such fit or illness he would not have suffered injury and death.

42 Denman, J., following the authority of Winspear *v.* Accident Ins. Co., held the company liable.

Williams, J., placed his concurring opinion upon the following grounds: "The whole case depends on the true construction of the words in the proviso, because in this case the deceased person having fallen down accidentally in a fit from the platform of the railway onto the rails was, while lying there, accidentally run over by a train that happened at that moment unfortunately to come up, and he was undoubtedly killed by the direct external violence of the engine upon his body, which caused his death immediately. The question arises whether, according to the true construction of the proviso, it can be said that this is a case of death arising from a fit, because if this death did not arise from the fit, according to the true construction of the policy, the remainder of the clause does not come into existence at all, and is inapplicable. It seems to me that the well-known maxim of Lord Bacon, which is applicable to all departments of the law, is directly applicable in this case. Lord Bacon's language, in his Maxims of the Law, Reg. 1, runs thus: 'It were infinite for the law to consider the causes of causes and their impulsions one of another. Therefore it contenteth itself with the immediate cause.' Therefore I say, according to the true principle of law, I must look at only the immediate and proximate cause of death;

43 and it seems to me to be impracticable to go back to cause upon cause, which would lead us back ultimately to the birth of the person, for had he not been born the accident would not have happened. The true meaning of this proviso is that if the death arose from a fit then the company are not liable, even though accidental injury contributed to the death in the sense that they were both causes which operated jointly in causing it; that is the meaning in my opinion of this proviso, but it is essential to that construction that it should be made out that the fit was a cause in the sense of being the proximate and immediate cause of the death before the company are exonerated, and it is not the less so because you can show that another cause intervened and assisted in the causation.

Thus it appears that although the proviso in the policy in that case was that if the death should arise from a fit the company should not be liable, even though accidental injury contributed to the death by operating jointly with the fit, it was nevertheless held essential to show that the fit was a cause, in the sense of being the immediate cause of death, in order to exonerate the company.

Scheffer *v.* R. R. Co., *supra*, only has application here by way of analogy. In that case a passenger on a railway car was injured by a collision of trains, and becoming thereby disordered in mind

44 and body he, some eight months thereafter, committed suicide.

It was held in a suit by his personal representatives against the railway company that his own act was the proximate cause of his death, and that therefore there could be no recovery.

Although it may be said that Crandal would not have committed suicide had he not been insane, and so that the insanity was a promoting cause of death upon the reasoning and authority of the cases referred to, the conclusion seems unavoidable that the act of self-destruction must be regarded, within the meaning of the policy, as the true and proximate cause of his death. Quite against my first impressions, when the case was submitted, I am constrained to hold, upon deliberate consideration, that the plaintiff is entitled to recover. If I am wrong in my conclusions it is a gratification to know that the case is one that may be taken to the Supreme Court for its judgment, and in which the error, if error has been committed, may be there corrected.

Judgment for plaintiff on the verdict.

Endorsed: Filed March 26, 1886. Wm. H. Bradley, clerk.

45 On the same day, to wit, on the twenty-sixth day of March, in the adjourned March term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Charles E. Dyer, district judge, is the following entry, to wit:

Judgment.

LORETTE M. CRANDAL *vs.* THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA.	Assumpsit.

Now comes the plaintiff, by George C. Fry, Esq., her attorney, and the defendant, by Thomas Bates, Esq., its attorney, and the court, having considered and being now fully advised upon the matters of law upon the facts as found by the jury, finds the law with the plaintiff, and that the plaintiff is entitled to recover herein.

And thereupon the defendant, by its attorney, moves the court for a new trial herein, and the court, being now fully advised upon said motion for a new trial, overrules the same and awards judgment; to which ruling the defendant, by its attorney, now excepts.

It is thereupon considered and adjudged by the court that the plaintiff, Lorette M. Crandal, do have and recover of said defendant, The Accident Insurance Company of North America, the said sum of ten thousand eight hundred and fifty-three dollars and thirty-three cents, her damages so as aforesaid assessed, together with her costs in this behalf expended, amounting to —— dollars and

46 —— cents, and that she have execution therefor, and on motion of the defendant, by its attorney, the court fixes the amount of the supersedeas bond at fifteen thousand dollars, and orders that said execution be stayed for sixty days to file said bond and prepare and settle the bill of exceptions herein.

On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record, which said exceptions are in the words and figures following, to wit:

47 (*Bill of Exceptions.*)

In the Circuit Court of the United States for the Northern District of Illinois.

LORETTA M. CRANDAL
vs.
ACCIDENT INSURANCE COMPANY OF NORTH AMERICA.

Bill of exceptions.

Be it remembered that on the trial of the above-entitled cause at the January term, A. D. 1886, of the circuit court of the United States for the northern district of Illinois, before a jury, the Honorable C. E. Dyer presiding as circuit judge of said court, the plaintiff, to maintain the issues on her part, introduced the following testimony:

Counsel for plaintiff offered in evidence the application to defendant for insurance, signed by Edward M. Crandal:

Application for Accident Insurance.

Amount, $——. Premium, $——.

Policy number, ——. Agency of ——.
To be filled out by agent, ——. At ——.
Home office register, ——.

Leave blank.

To the Accident Insurance Company of North America:

The undersigned hereby applies for a policy of insurance against bodily injuries effected through external and accidental vio-
48 lence, said policy to be based upon the following statement of facts, which I hereby warrant to be true:

1. My full name is Edward M. Crandal.
2. Age, ——.
3. My residence is Chicago, county of Cook, State of ——; my place of business is (street or No.).
4. My occupations ar- fully described as follows: Manufacturer of barbed wire.
5. Write policy payable in case of death by accident under provisions of the policy to Loretta M. Crandal, whose relationship to me is that of wife.
6. I have no other insurance in The Accident Insurance Co. of North America and no other accident insurance in any company or association except as herein stated.
7. The class of risk under my occupation is preferred.
8. I understand that if I meet with an accident while engaged in any occupation rated higher than that under which I hereby elect to insure I will receive compensation *pro rata.*

9. The amount of insurance in case of accidental death to be $10,000.

10. The amount of weekly indemnity for totally disabling injuries to be $50.

11. Said policy to continue in force during a period of twelve months.

12. I have never had nor am I subject to fits, disorders of the brain, or any bodily or mental infirmity except as herein stated. No.

13. I have not in contemplation any special journey, nor
49 any hazardous undertaking except as herein stated. No.

14. My habits of life are correct and temperate, and I understand that the policy will not cover any accidental injury which may happen to me either while under the influence of intoxicating drinks or in consequence of having been under the influence thereof.

15. I am aware that this insurance will not extend to hernia, nor to any bodily injury of which there shall be no external and visible sign, nor to any bodily injury happening directly or indirectly in consequence of disease, nor to death or disability caused wholly or in part by bodily infirmities or by disease, or by the taking of poison, or by any surgical operation or medical or mechanical treatment, nor to any case except when the accidental injury shall be the proximate and sole cause of disability of death.

Dated at Chicago this 23d day of May, 1884.

EDWARD M. CRANDAL.

N. B.—The policies of this company are not forfeited by the insured engaging in a more hazardous occupation than that for which he has paid his premium.

See question 8.

Plaintiff introduced in evidence the policy of insurance sued on, No. 70897, in defendant company, dated May 23, 1884.

(See page 4.)

50 Plaintiff also introduced in evidence notice of death to defendant company, reading as follows:

"CHICAGO, *July 9th*, 1884.

"To The Accident Ins. Co. of N. A., Messrs. Wheeler & Gaylord, agents at Chicago, Ills.:

"You are hereby notified that Edward M. Crandal, the insured under policy No. 70897 in your company, died through external and accidental means on July 8th, 1884, at his residence, No. 1615 Indiana avenue, Chicago, Illinois, and you can there examine, if you so desire, the person of said insured.

"Respectfully,

LORETTA M. CRANDAL,
"By GEORGE C. FRY, *Att'y*."

It is admitted that Edward M. Crandal died on the 7th of July, 1884. Counsel introduced in evidence the following notice of death:

"CHICAGO, ILLS., *July* 11, 1884.

"Messrs. Wheeler & Gaylord, ag'ts for Accident Ins. Co., Chicago, Ills.

"GENTS: On the 9th inst. I, for Mrs. Loretta M. Crandal, notified you of Mr. E. M. Crandal's death through accident on the 7th inst. (incorreetly stated the 8th inst.). The particulars of his death are that he hung himseif on the morning of the 7th about 6.30
51 o'clock, either accidently or in a temporary fit of insanity.

"Your Mr. Gaylord was with the body of deceased within a couple of hours after his death and repeatedly afterwards up to the hour of his burial. Any other particulars your company may desire will cheerfully be given.

"GEORGE C. FRY,
"*For Loretta M. Crandal.*"

Plaintiff also introduced the following letter:

CHICAGO, *July* 12, 1884.

Geo. C. Fry, att'y for Loretta M. Crandal, Chicago, Ills.

DEAR SIR: Your notices under date of July 9th and 11th, in regard to the death by hanging of Mr. E. M. Crandal, received. We would call your attention tc the provision of our policy, Accident Insurance Company of North America: "Provided always that this insurance shall not extend to * * * or by suicide or by freezing, or by sun-stroke, or by self-inflicted injuries," under which provision it is clear that in the above-mentioned case there can be no legal claim.

Yours truly, WHEELER & GAYLORD,
State Ag'ts.

Plaintiff introduced proof of death furnished to defendant July 31st, 1884.

52 *Affidavit of an Eye-Witness to the Accident.*

1. How long have you known deceased?
He was my father; I am 22 years old.
2. Where was deceased at the time that he met with the accident?
At his residence, 1615 Indiana avenue, Chicago, Ills.
3. What was he doing?
Hanged himself by his neck in his own sleeping-room while, as affiant believes, temporarily insane and incapable of distinguishing the legal or moral effect of the act.
4. What time of the day was it when he met with the accident?
About 6 o'clock a. m.
5. What was the nature of the injury received?
Death from hanging by the neck while, as affiant believes, temporarily insane.

6. Was he under the influence of spirituous liquors at the time?
No.

7. Did you ever know him to be under the influence of spirituous liquors while he was at work; if so, when?
No.

8. What were you doing at the time that he met with the accident?
Affiant had just arisen from bed when discovered.

9. Were any other persons besides yourself present at the time deceased met with the accident? If so, give their full names and post-office address.

53 The only other persons, until the arrival of the physician, were my mother and brothers and servant.

10. State fully how the accident occurred, with all other particulars in relation thereto.

After my mother had arisen in the morning Edward M. Crandal hanged himself by means of a pair of suspenders attached to a door-knob in his sleeping-room. Affiant was called to his room by screams from her mother, and assisted in loosening the body from that situation. Affiant immediately sent for a physician, who arrived shortly afterwards, but at that time he was beyond the reach of help. Affiant believes that her father committed said act while he was insane and not in possession of his mental faculties, and incapable of distinguishing either the moral or physical effect of said act.

(Signature) MARY E. CRANDAL.

STATE OF ILLINOIS, }
County of Cook, } ss:

On this 26th day of July, 1884, personally appeared before the undersigned, notary public in and for the said county, the above-named Mary E. Crandal, to me well known, and to whom I

54 have read the foregoing questions and answers and all the matters above stated, and who, after being fully advised in the premises, subscribed the above statement in my presence, and made oath that the foregoing statements, and each and all of them, are full and true and without reservation.

[SEAL.] GEO. C FRY,
Notary Public.

Post-office address: 84 La Salle St., Chicago, Ills.

Attending Physician's Statement in Evidence of Claim of Edward M. Crandal, of Chicago, Ills.

1st. What is your name and address in full?
Answer. James Nevins Hyde, 240 Wabash Ave., Chicago.
2nd. When and where did you graduate?
Answer. Med. Dep't Univ'y of Penn'a; 1869.
3rd. Are you now engaged in the practice of your profession?
Answer. Yes.

4th. How long have you been personally acquainted with the deceased?

Answer. Never knew him.

5th. Did you at any time attend him for any accidental injury?

Answer. Never before July 7, 1884.

6th. When were you first consulted or called?

Answer. July 7, 1884, about 6.30 a. m.

7th. Where did you first attend him?

Answer. At his residence, 1615 Indiana Av.

8th. Did you make an examination of the deceased's person?

55 Answer. Yes.

9th. What, if any, exterior or visible sign did you find of injury caused by violent and accidental means?

Answer. Person of deceased was extended on floor; supine position; pulseless; insensible; appearantly just dead; head purplish in color from nervous congestion; sanguyans; froth at mouth and lips; line of demarcation at neck produced by cord; body well nourished; death by suicidal strangulation.

10th. What was the precise nature of the injury, and its extent?

Answer. Suicidal strangulation by suspenders from knob of door.

11th. Was the deceased, to your knowledge, afflicted with any affection or disease—acute or chronic—at the time; if so, to what extent did it contribute to his death, or to the accidental injury causing his death?

Answer. ——

12th. Was the deceased under the influence of spirituous liquors at the time of your first visit?

Answer. No.

13th. What local and constitutional symptoms existed after the injury, and what treatment did you adopt?

Answer. ——

14th. What causes, in your opinion, operated to produce the death of deceased?

56 Answer. Death by suicidal strangulation, evidently (judging from history given me that morning by family of deceased) from mental trouble. He had taken bromide of potassium the night before to obtain sleep, but had had a most restless night.

15th. Have you stated all the material facts in connection with this matter?

Answer. Yes.

And I hereby certify that I am not related to the deceased in and manner whatever, and that I have truly answered all of the foregoing questions.

JAMES NEVENS HYDE,
Attending Physician.

Dated this 28th day of July, 1884.

Coroner's Certificate. (If Inquest was Held.)

I, N. B. Boyden, of Chicago, coroner for the county of Cook, do hereby certify that an inquest was held upon the body of the

above-named Edward M. Crandal at 1615 Indiana Ave. on the 7th day of July, 1884, and that the verdict was death from suicide by hanging.

(Signature.) N. B. BOYDEN, *Coroner*,
Per T. P. SHANAHAN, M. D., *Deputy*.

Certificate of Clergyman or Well-Known Person.

I, J. W. Fairley, of Chicago, Ills., do hereby certify that I was acquainted with the above-designed Edward M. Crandall, and I believe him to have been killed as stated in the above declaration,
57 and that I am aware he is the same person who is designated in a policy of assurance issued by the Accident Insurance Company of North America, numbered 70,897.

For verification of my signature I refer to Rt. Rev. B. B. Ussher, of Montreal, Can.

(Signature.) J. W. FAIRLEY.

Witness:
S. K. CHAPMAN.

Certificate of Official.

OFFICE OF GEO. C. FRY, CHICAGO, *Jan.* 22, 1884.

This is to certify that Edward M. Crandal was formerly known to me and was employed as a manufacturer of wire, and that he met with an accident July 7th, 1884, as described in the witness's testimony in the attached claim, and that he died from the effects thereof on the 7th day of July, 1884, and that his death, or the accident causing it, was not attributable to the excessive use of intoxicating liquors or pre-existing infirmity; and I believe him to be the same person who was insured in the Accident Insurance Company of North America under policy —.

(Signature) GEORGE C. FRY,
Please state official position.
Notary Public in and for Cook County, Ills.

Affidavit of Beneficiary.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Loretta M. Crandal, of Chicago, Ills., of lawful age, being
58 duly sworn, says that she is the beneficiary named in the application of Edward M. Crandal for a policy of accident insurance to be issued by the Accident Insurance Company of North America, Montreal, Canada; that the said applicant met with his death in the manner described in the foregoing statement, which affiant has had read to her, and knows the contents of the same to be true.

LORETTE M. CRANDAL,
Beneficiary.

Subscribed and sworn to before me this 29th day of July, 1884.
Name of official, GEO. C. FRY, [SEAL.]
Title of official, *Notary Public.*
P. O. address, 84 *La Salle Street, Chicago.*

Endorsed: Rejected. The Accident Insurance Company of North America. Proof of the death of Edward M. Crandal, who died at Chicago, Ill. Policy No. 70897. Voucher No. —. Claim No. —.

59 Plaintiff introduced in evidence the following letter:

CHICAGO, *July* 31*st*, 1884.

Mrs. Loretta M. Crandal, 1615 Indiana Ave., Chicago.

MADAM: We are in receipt of proofs of death of your late husband, Edward M. Crandal, who was insured in this company under policy No. 70897, and from the statements in said proof there would appear to be a missapprehension as to the character of the policy, which is a policy of accident insurance, not life insurance.

Mr. Crandal's death was self-inflicted, and therefore was not the result of an accident, and if you will consult legal advice you will see that you have no claim on this company.

Regretting sincerely, madam, the necessity of this letter, more especially as regards the circumstances that call for it, we remain,

Respectfully, LARRABEE BROS.,
Managers Accident Ins. Co.

It is admitted that proper notice of death was given the company as required by the policy.

LORETTA M. CRANDAL was called on her own behalf and testified as follows:

60 My name is Loretta M. Crandal. I am the same person named in the policy of insurance. Edward M. Crandal was my husband; he was 55 years old when he died, and weighed 175 pounds in good health. When he was like himself he was very social and very pleasant and kind to his family, and did all he could for them; he was always very social with his friends and was never despondent until the last year or six months of his life. He was usually very bright and cheerful.

Q. What were his habits as to living when he was in his usual health?

COUNSEL FOR DEFENDANT: I think I will object to this. It is a question in my mind whether I should object to the evidence of Mr. Crandal's mental condition at this time, and in that way bring up this question of liability, or allow this evidence to go in and when we get all their evidence in demur to it.

THE COURT: I think the court will prefer to have the evidence put in, preserving any right the defendant may have in objecting to the testimony, and then pass on the question afterwards, so the reporter may note that this testimony and the testimony of any
61 and all witnesses that may be called in behalf of plaintiff of the character of that sort, to be elicited from the witness on

the stand, is objected to on the ground that it is immaterial and irrelevant. The testimony is taken subject to the objection, which will be hereafter considered and ruled upon by the court.

PLAINTIFF'S COUNSEL: Of course if there is any objection on the score of leading questions they ought to be made at the time.

It is admitted that the premiums under said policy were duly paid.

(WITNESS, continuing:) Mr. Crandal was usually a very great sleeper; until a few months of his death he did not sleep scarcely any, and some nights not at all; from the 19th of May, 1884, until he died I do not think he slept an hour during the night; usually when he was well he went to bed as early as half-past eight or nine o'clock; he made it a point to retire early even if there was company; he rose very late in the morning; he was always the last down to breakfast; after the 19th of May, 1884, there was a great change; some nights he would not sleep at all, and some nights
62 he would get, say, an hour's sleep in the night; he tried in many ways to induce sleep; he would get up very early in the morning and complained that he could not sleep, and I insisted upon his going to a physician or let me go, but he said he would not; there was a very great change in his appearance; I first noticed it about the first of May; he grew very thin; lost a good deal of flesh and was inclined to be morose; he seemed desirous of avoiding his family and friends, and would avoid them; and sometimes, when we thought he was reading the paper, we would discover that he was not reading; his mind would seem to wander.

Q. Well, what were his actions towards the members of his family; if there was any change, state what it was after the 19th of May or the first of May.

A. He seemed to—he seemed to think his family—he would often make use of this expression, that he thought that his family——

COUNSEL FOR DEFENDANT: I object to witness stating what the deceased said.

COUNSEL FOR PLAINTIFF: I think it is proper that we connect the
63 expression with about the time of the change.

THE COURT: I am inclined to think that is admissible as part of the circumstances or *res gestæ*.

COUNSEL FOR PLAINTIFF: We are not asking for any conversation, but mere expressions, to show the change in the man's nature.

THE COURT: I think I will overrule the objection and allow the testimony.

Objection and exception.

THE COURT: Whenever there is a ruling by the court the reporter may note an exception.

(WITNESS, continuing:) He said he would not blame his family if they would not recognize him if they should meet him. He said: "Don't my actions go to show that I am crazy?" He said: "I hope it will be a lesson to my boys not to do as I have done. My actions show that I am crazy." That was about the last of June, perhaps

a week before his death, that he had this conversation. He died on Monday, July 7th, in the morning. On the Saturday previous he was unusually nervous, and his eyes were very glassy. He said that he had made so many mistakes in his life he must have been insane. His face was very red and his eyes were very glassy. He said he must be crazy. We had a plumber working in the house,

64 and Mr. Crandal was very nervous—nervous and very anxious—so much so that he went about his room with his hat on his head, carrying a fan in his hands, which he picked all to pieces. I asked him what was the matter, and he said, said he, "I don't know why I do it." He was very irritable, which was very unusual for him. He was one of the kindest fathers and very indulgent to his children and family and friends, but at that time he was very morose and tried to avoid his family and children. He was usually very fond of his dog, but now he would push him away and have nothing to do with him, which was quite unusual, because he was very fond of him. He thought there was some one watching the house; he would start and say people were watching the house, and when I asked him why he would say he did not know why. On the Saturday afternoon prior to his death he went to the stable to see that his horses were taken away, and my daughter went to the stable and came rushing back to me and said that papa must be crazy, for he had grasped her——

COUNSEL FOR DEFENDANT: I object to witness repeating the statements of her daughter.

Objection sustained.

Q. Now, what reply did you make to what your daughter said?

Objected to. Objection sustained.

65 (WITNESS, continuing:) After that, during the day, he appeared very nervous—exceedingly so. He lay on his couch and his face was very red and his eye-balls very much distended. He went to his room about eight o'clock and I gave him some bromide. He slept some during the night. On Sunday morning he seemed a little brighter, but nervous; dressed himself and remarked that his clothes were very loose. He said: "Just see how loose my clothes hang on me. They hang on my back." He did not eat anything at breakfast; said that he would go out for awhile; that he wanted to see Mr. Fry and Mr. Kirkhan, and he went out and came home about one o'clock. On Sunday evening he seemed to be quiet, but still had that strange expression in his face. About nine o'clock we retired, and during the night, as he was unusually restless, I gave him some bromide. He said he did not sleep any since two o'clock Sunday night—but very little—perhaps half an hour all the time—and when he did sleep he had horrid dreams. I persuaded him to take some more bromide about five o'clock and went into another room, so as not to disturbe him. I remained away about an hour, and when I returned I found him dead. I found him inside the closet. The door was ajar. His head

66 and his suspenders were attached to the inside of the door-knob, and he was lying on his face with his hands towards the floor—his hands by his side. I raised his head and his suspenders fell from his neck. There was but one knot in the suspenders. As I laid them down they fell on the floor. There was a bruise on his face in the left temple, and blood was oozing from his nostrils and his mouth. Prior to this, at the table, when he was eating, on two occasions, he choked very hard and so that his head and face were all black. I asked him what was the matter, and he said: "I expect it is my nervousness; I don't know." I believe him to have been insane at the time of his death.

Cross-examination by counsel for defendant:

(WITNESS:) At the time of Mr. Crandal's death Mr. Crandal was manufacturing barbed wire; had been engaged in that business for several years. He had business troubles. I don't know that I can state what they were—some with the Washburn Moen M'f'g Co. He had had suits against them and they worried him considerable.

67 At the time of his death he was not a man of means. He had met reverses in business and, to some extent, he lost his property, and it worried him. In December, 1883, he stepped on a pin; that was the December prior to his death. I don't know that blood poisoning resulted. It was not so decided. He was lame for a good while. It troubled him a good deal. At times there was very much pain in his foot when he would walk and get tired. From about May first he began to loose flesh. He did not complain particularly of any illness or sickness. I should judge he was not well. He did not take bromide at all prior to his death until the Saturday night before he died. I then gave him a teaspoonful every two hours from about ten o'clock until morning. It was the elixir. I gave it to him in water. On Sunday he did not take any bromide during the day, and on Sunday night I gave him doses in the same manner and at the same intervals of time. I got up about five o'clock Monday morning. He was awake at the time. I asked him how he felt and he said he did not feel any better; that he had not slept any since two o'clock, and that the bromide did not do him any good. I said he had better take another dose and go to bed. He was then up by the mantel. I said,

68 "You may sleep some yet." I said, "You take some more and lie down. It is early yet and you may get some sleep, and I will go and lie down in another room." He took some and I left the room. He did not say he had taken too much, but he said that what he had taken had done no good. I did not see him again alive. I was gone just one hour. I did not hear any noise. When I returned I found him in the condition I have stated. The last time he was weighed he said, "I am losing flesh. I have lost over 30 pounds." He was getting so thin that his neighbors remarked it. I don't know that Mr. Crandal's despondency was caused by his reverses in business. He had had reverses before and had always been cheerful and hopeful in them before. His business troubles might have caused his despondency. He had a good deal

of trouble in his business that worried him. We had company on the Sunday evening before his death—a number of friends of my daughter. It was quite warm. That was not the day Mr. Crandal was fanning himself. It was the day before. It was warm weather during July. I had no conversation with him Sunday evening that I remember of. On Sunday afternoon he did not
69 say anything scarcely after he came home from his trip to see Mr. Fry and Mr. Kirkhan. He lay down on the lounge almost all the evening. When tea was ready he eat his tea and lay down again; did not seem to be inclined to read; seemed to want to be let alone; had no desire to converse with his family. I think I believed him insane since the 19th of May. I did not consult with any physician about the matter, and I don't know as I realized that he was insane all the time. I don't think I realized that he was insane all that time. I did not take any means to ascertain whether he was insane or have him treated as an insane person, for I did not want to think that he was insane. He had never, to my knowledge, prior to this time made any attempt at suicide. He always abhorred the idea and made the remark that a man must be insane who would commit suicide. I don't know that I came to the conclusion that Mr. Crandal was insane prior to his death. I felt that he was, but did not want to allow myself to think that he was; but I must admit that I felt before his death that he was not
70 in his right mind from his manner. I suppose I should attribute his ill health to his business troubles and to the accident to his foot.

Redirect examination by plaintiff's counsel:

(Witness:) At the time he hurt his foot he was in bed two weeks After that he was indoors three weeks, but he was able to walk out. After that he was out every day; took two trips east. His foot did not bother him after that. I made the remark Saturday night before he died that he was insane. I got the bromide at Dr. Fry's drug store.

Q. How did you come to get it?

A. Well, a friend——

Objected to. Objection overruled. Exception by defendant.

A. I got it on the recommendation of a friend. She asked me to get some bromide and give it to him to induce sleep, and I went to Mr. Fry's and got 2 oz. I got elixir of bromide. My friend said she used it during the day, and asked me to get some and try to induce sleep. Mr. Crandal did not discuss his business troubles to me. All I knew was from inference; he never told me.

71 W. Harrison Bradley, a witness called for the plaintiff, testified as follows:

My name is W. Harrison Bradley. I am a resident of Chicago; agent for the Cambria Iron Company, and knew Mr. Crandal in his lifetime for three or four years prior to his death. Mr. Crandal was a very genial, gentlemanly man—a pleasant, quiet, peaceable

man—rarely excited. I never saw him angry. I saw very little of him socially, but what little I saw of him made me like to have him come into the office for a chat. In a few conversations I had with him he seemed very well informed, and I looked upon him as a well-informed gentleman. I think it was within a few weeks of his death that I noticed he was different from any other time. He owed our company considerable money, and used to come in and talk about it, and along in the early part the conversations were quiet, but along before his death he seemed to be breaking down all through, and within the last week or two he was in two or three times and seemed to be distressed about his family. He would come in and sit down and talk about the possibilities of the future.

72 He had a daughter, he told me, and what was she going to do. She had never been taught to do any work, and his wife was a subject for the poor-house, and his son—they all seemed to burden his mind very much indeed. He felt as if everything was going to leave him; that it meant dishonor and all that sort of thing. He spoke of it in such a wild sort of way that I tried to quiet him down; but the call that was most impressed upon my mind was within a day or two of his death. He came into my office and threw himself into a chair. I looked up. He sat there a moment without saying anything. His face was purple and his eyes—you know the expression, "pop-eyes." His eyes seemed to be pressing out, and he seemed to be under a great mental distress. I was startled, and then he broke out in this way—I don't remember the exact words, but he spoke in a very wild way. He went on about the poor-house and his family, and all that sort of thing, in the same strain that he had before, but in such an increased way that I tried still harder to quiet him. I think his call was over an hour. He kept talking and sitting, and when I would get him off

73 from the subject of his misfortunes and would try to quiet him he would break out in the same wild way. I turned to my desk, when he had gone, with the thought that if something did not come to relieve his mind in some way he would be a fit subject for the lunatic asylum, merely from my knowledge of him before. I saw him last one or two days before his death. It was Friday or Saturday that he was in my office. My impression is that he was there two or three times during the week prior to his death. His last conversation was in a wild way, as I said. I could not remember the words of the conversation, but it was more of an impression and the general appearance of the man that made an impression on my mind. As I said a few moments ago, I remember thinking, after he was gone, that an asylum would be the place for him if something did not come to relieve him. He was certainly not in a sane condition of mind in my office that afternoon. Medically speaking, I know nothing about it; but that was his condition compared to his former condition.

Cross-examination:

I know that in some directions Mr. Crandal was involved in debt. He felt that. The truth was, he was not as bad as he expected, from

after developments. I don't know that he was insolvent.
74 He was indebted largely to our house. That debt has been taken care of, with the exception of one company that he was interested in. He was interested in several companies. It was rather a mixed affair. There was a portion that he was personally liable for. That, I believe, has all been taken care of and settled. The exact facts I don't know. As soon as Mr. Crandal died the matter went into our legal department, and thereafter I had only a general knowledge of it. I only know in a general way that there had been litigation with Washburn & Moen. From what he told me and what I learned of his affairs, they were in rather bad condition at that time, and I attributed his condition to that fact. I was not intimate with him socially. Whether he would know right from from wrong is a very doubtful question. I certainly do not know whether he did or not. I think Gen'l Crandal would in his natural condition find it difficult to do a wrong thing, from what I know of him. I did not suggest and medical treatment. I advised him to go home. It did not occur to me to go to see a physician in reference to him. I was not socially acquainted with him; it was only a business relation. It was very difficult to tell how many
75 interviews I had with him. Hardly a week passed but I saw Mr. Crandal on one matter or another for probably a couple of years. I can remember nothing that he said more than these expressions in regard to the fear of what was going to become of his daughter and that the poor-house was yawning for them all. That was on account of his financial condition. I did not see him after that.

Redirect examination:

He was connected with the Chicago Galvanized Fence Company, and that was also in litigation with Washburn & Moen, and the Washburn & Moen matter will be paid in a few days, and that will clean up the whole thing and settle our matter.

I saw him more frequently for about four months prior to his death and before that.

76 ELMER WASHBURN, a witness called for the plaintiff, testified as follows:

My name is Elmer Washburn. I have resided in Chicago since 1872. I am president of the Stock Yards Bank. Prior to that I was national bank examiner for four years, nearly. I knew Edward M. Crandal; have known him intimately for 22 or 23 years. I met him during the war. During my acquaintance with him up to within a few weeks before he committed suicide he bore the character of a very sociable, agreeable man, very genial, always glad to see his friends, very kind to his family, and indulgent. He was a man of very good general information. Prior to his death I noticed a change. I knew him socially. This change occurred in June of the summer that he died. He became very despondent. He had always been very hopeful. I have seen him at times when I felt there was occasion for his being utterly discouraged, and I never

saw anything about him that gave evidence of discouragement or dispondency until within a few weeks before his death. A week Sunday before his death he was at my house, and I had a long talk with him. I observed then that his expression was very changed.
77 His speech was incoherent, and he acted like a man that had no control of himself. He would fly from one subject to another with little or no connection between the subjects. His eyes were glassy and protruding. That was the last time I saw him. Between the first of June and the Sunday I speak of I don't know how many times I saw him. The last time I saw him I concluded there was some trouble with his mental organization; that he was seriously disturbed. I suppose that would be called insanity. He did not appear to me like a man that had control of himself. His speech and actions seemed to be impelled by a power very different from what I had seen of him during 22 or 23 years.

Cross-examination:

I was one of the coroner's jury at the inquest on Mr. Crandal. We found his death was the result of suicide. He committed suicide on Monday morning, I think. It was a week Sunday before that I saw him last. I made some suggestions to him about his business affairs and some about his condition. I said that he should take care of himself and give some attention to his physical condition.
78 It appears he was considerably involved financially at that time, and it worried him a great deal. I knew of his troubles with the Washburn & Moen people. I did not at that time, or before or after that time, suggested to his wife that he was insane, and I saw no doctor with reference to him, nor did I go to any of his friends to appraise them of the fact.

Q. Is it the fact, Mr. Washburn, that on that Sunday you believed that he was insane, or that he might become insane? Did you actually believe that he was insane—what is commonly called insane?

A. It depends upon what you call insanity. I believed fully that the man's mental organization was seriously disturbed. I suppose there are different degrees of insanity. If a man loses a large amount of money or meets with any great misfortune, it is apt sometimes to cause him to be considerably worried mentally. It affects men differently. I may say that Mr. Crandal's mind was seriously affected. I could not state any conversation that I had with him on that day in detail. The subjects were his business affairs and troubles. He did not solicit any aid from me. The
79 burden of his talk was [that] he was all used up financially; that he had no hope; it was no use to try any further; he might as well give up and break down. He was utterly discouraged. I don't remember that he ever talked to me about suicide, but he felt there was no use to try to retrieve himself.

Redirect examination:

Mr. Crandal was not excitable. He was very cool and calm under all circumstances until the time I speak of. I have seen him under

circumstances where it was almost too much burden for a man to bear, and he did not give up or become discouraged or despondent.

80 MADISON FISHER, a witness called for the plaintiff, testified as follows:

My name is Madison Fisher; am in the livery business in Chicago; was acquainted with Edward M. Crandal; had known him for about five years very well. My stable was about two blocks from his house. At one time he kept his horses there; used to be in the habit of just stopping when he came home from the city; would step in in the evening and stay perhaps an hour; was not familiar with his personal characteristics and habits. He was generally well informed. He was usually bright and cheerful, until about two weeks before his death. He was in the habit of walking into the office He would usually come in slow and sit down, but on this time that I noticed he cam- rushing in. He appeared to be excited, and beckoned to me, and took me around into the carriage-room, and into a private carriage-room, and then said: "There is nobody around, is there?" I said no one that I saw. He said: "I want to sell my horses and carriage; I want to sell them right away, and don't you let any one know anything about it." I thought he was talking very quick and nervous. I thought it strange. I
81 asked what he wanted for them. He said: "Never mind about that, just sell them and don't let any one know who they belong to; sell them right away." One day I was over to the blacksmith shop and he rapped against the little window and beckoned to me to come out. I went out, and he says, "Have you not sold the horses yet?" I says, "What will you ask for them?" "Never mind about that," he says; "sell those horses and carriages; don't let anybody know who they belong to." I thought it awful strange the way he was talking. I went back into the office and said, "There is something the matter with Mr. Crandal; he acts very funny," or something of that kind, and that is the last I seen of him. His usual manner of talking was quiet. He was pleasant in his manner before the change. The first time I ever noticed any excitement about him was that evening. I thought it very strange, because he always spoke out very frankly to everybody in there. When he beckoned to me quick and started for the door I was positive there was something the matter with him. When he peeked through the window and beckoned to me I was surprised, and when I heard he was dead I thought that accounted for all this.
82 The last time I saw him he did not act right. I thought he acted strange. I thought there was something the matter with him. My opinion was that he was not right—that he was insane. I thought he was crazy that evening that he bec-oned at the window there.

Cross-examination:

I did not say anything to him about his condition of mind, not a word; I thought he was rich then, and never heard a word about it but that he was rich until after his death, and that was one rea-

son why I thought it so strange about his wanting to sell his horses and carriage, because I thought he was rich; I do not think that people are always insane that come to me to sell horses, but this man appeared to be excited when he came; I thought he was insane because he acted that way; he acted as though he wanted to sell his horses and carriages; he had always been in the habit of coming in cool-y and not in this excited condition; I thought he was acting very strangely in the way he answered me. If a man who was wealthy becomes largely involved in debt they do, as a general thing, desire to keep the sale of their prop-
83 erty quiet; they all do, as a general thing, and in that there was nothing to indicate insanity; the thing that indicated insanity was the way he acted; he appeared nervous and tremulous; I did not suggest to him that he had better see a physician or that he was insane, and I made these suggestions to no other person.

Redirect examination:

Before this time he came to me to sell a little carriage, and told me it ought to fetch $175—something like that; he put a price on his carriage at that time; he told me not to sell it for any less until I would see him.

84 ORVILLE P. CURRAN, witness for plaintiff, testified as follows:

My name is Orville P. Curran; am manager of the Equitable Life Insurance Company of Chicago. I was acquainted with Edward M. Crandal in his lifetime and knew him from about the 15th of September—nine months practically.

Q. Did your company have a policy on his life?

Objected to. Objection overruled. Exception by defendant.

A. Yes. I wrote him $15,000 on the 15th of September previous to his death. After that I saw him quite frequently, and was familiar with his personal characteristics and habits of talking. He was a very pleasant man, and I found him [a] very sociable and genial gentleman and one whom I liked to meet socially. He was always cool in talking and was very well informed; but I cannot tell how often I saw him or how many times. I called at his office several times and he called at mine. Within the last few days prior to his death I noticed a great change. On the 14th of June he called to have me extend the time for paying his premium. On the 5th of July I met him on Dearborn street, not far from our office, and he stated to me that the extension of the time for
85 paying his premium had been granted by the company; and this time he was more nervous than he was on the 14th—much more. He did not look as he usually did. His eyes were sort of glassy and his personal appearance not as neat as usual. We had a pleasant talk, and he impressed me so that when he passed I turned and watched him for more than half a block. I could hardly account for it. When I saw the account of his death

I accounted for it in that way. His conversation was not connected. His face was very red at the time. At that particular time I did not form an absolute opinion of his sanity. I thought he must have had some serious trouble to account for his actions. I did not arrive at any conclusion in regard to his sanity until after his death.

Cross-examination:

I cannot tell how often I saw him. We met probably every month—once or twice a month. During the nine months I saw him once or twice a month. I was not a visiter at his home, nor was he a visiter at my family. I think that by meeting a man casually once a month for nine months, or from 12 to 18 times altogether, I could form an opinion of his character and
86 habits if he were a man that would communicate as much as Mr. Crandal did with me. The object of the conversation that I had that last time with him was whether he had received notice of the extension of the thirty days' time for paying the premium and then went off on to general conversation. He said he had received the notice and talked quite rationally.

Redirect examination:

It was a general conversation, and there was a change in him. It made such an impression upon me that I noticed the change and watched him.

Recross-examination:

He talked about his trip. I cannot tell all the conversation. All I know is the impression he made on me. It was simply an impression. His general appearance impressed me as though something was wrong—a great change. He told me he did not know where he was coming to. He did not know whether he would be able to keep up the policy long or not, but he would keep it up for the next premium. I don't know as he was hard up. He said he was able to pay his premium because he was receiving salary
87 enough—I think $300 a month, independent of anything else. He told me he had enough to pay it. He told me he had lost a large amount of money, and our conversation ran off in that way, and made an impression on me. I did not speak to him about his condition, nor did I say anything about it to any one else.

88 PIERRE D. FRANCIS, a witness called for plaintiff, testified as follows:

I live in Chicago, and knew Edward M. Crandal for about eight or nine years prior to his death. I was in his employ from the first of March, 1878. I was book-keeper and cashier for the Chicago Galvanized Wire Fence Company, of which he was president. Up to about three months or six weeks of the time before his death, he was a very jovial and good natured man—one of whom the boys

thought a good deal. He was easily approached. He was always good natured, nothing seemed to annoy him about the business, and when things did not go just right, it did not seem to bother him any. What he had to say he would say in a deliberate way. He used to get to the office about ten o'clock, and go home about three or four, until within two months of his death, when he got there early. I would get in about eight o'clock, and lots of times he would be there as soon as I was, and stay all day, which was something very unusual for him. I noticed a change in his manner and habits. His face was flushed and ruddy, and his eyes were glassy and staring. He would sit in his chair and twirl his mustache, and look off, and did not pay attention
89 to anything around him; sometimes he would answer a question and sometimes not. He would talk excitedly and his subject was not connected. I saw him on Saturday prior to his death. I saw him at the office all the forenoon and at the stable about four o'clock. He seemed to be very nervous and excited. His appearance was as I have stated. His cheeks were very red, and his eyes staring and glassy. He told me about two weeks before he died that he had not slept any for two weeks. On Saturday prior to his death he had a horse that he wanted me to take out into the country and sell it. I thought I had a party and asked him what would he take for it. He said it did not make any difference, take it out and get what I could for it; it didn't make any difference about the price. I thought that very strange, as he seemed to think a good deal of that horse. He says, "That is a nice horse." I said, "Yes, a very nice horse." Then he would talk about something else, and walk back and talk about the bridle or saddle and run off about some business matter. He paced up and down the barn floor. My impression was that he was out of his mind.

Cross-examination:

90 I took the horse out that afternoon. I was in his employ and did not suppose that I was to question what he told me to do even if I knew he was insane. I believe in obeying orders if it should break the boss, whether he is sane or insane. If he told me to set fire to the factory that would have been a different thing. I don't think I should have done it; I should have drawn the line there. Mr. Crandal had general supervision of the affairs of the company. He did very little writing. He looked after the factory more than he did the office. One thing that made me think there was something wrong with him was because he did not talk any. I do not recall any conversations with him except about losing his sleep. That is the only thing I recall. I had conversations every day with him, more or less, about different matters, but I don't recall any particular thing except that. I never suggested to him the propriety of going to a physician. I talked with Mr. Kirkhan. I thought I was acting for Mr. Crandal's best interest in selling the horse.

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thought a good deal. He was easily approached. He was always good natured, nothing seemed to annoy him about the business, and when things did not go just right, it did not seem to bother him any. What he had to say he would say in a deliberate way. He used to get to the office about ten o'clock, and go home about three or four, until within two months of his death, when he got there early. I would get in about eight o'clock, and lots of times he would be there as soon as I was, and stay all day, which was something very unusual for him. I noticed a change in his manner and habits. His face was flushed and ruddy, and his eyes were glassy and staring. He would sit in his chair and twirl his mustache, and look off, and did not pay attention
89 to anything around him; sometimes he would answer a question and sometimes not. He would talk excitedly and his subject was not connected. I saw him on Saturday prior to his death. I saw him at the office all the forenoon and at the stable about four o'clock. He seemed to be very nervous and excited. His appearance was as I have stated. His cheeks were very red, and his eyes staring and glassy. He told me about two weeks before he died that he had not slept any for two weeks. On Saturday prior to his death he had a horse that he wanted me to take out into the country and sell it. I thought I had a party and asked him what would he take for it. He said it did not make any difference, take it out and get what I could for it; it didn't make any difference about the price. I thought that very strange, as he seemed to think a good deal of that horse. He says, "That is a nice horse." I said, "Yes, a very nice horse." Then he would talk about something else, and walk back and talk about the bridle or saddle and run off about some business matter. He paced up and down the barn floor. My impression was that he was out of his mind.

Cross-examination:

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91 CHARLES PECK, a witness called on behalf of the plaintiff, testified as follows:

My name is Charles Peck; I live in Chicago; I was acquainted with Mr. Crandal for about four years. My headquarters were at his office. When I was in town I was there a majority of the time. I saw him every day. My acquaintance with him was one of very favorable impression of his good social nature. I had no business relations with him and only saw him in — his office matters. During the latter part of my acquaintance I could notice quite a change of depression and abstraction and irritation. I was at his office on Saturday prior to his death, and saw a decline personally in his habits and ways and characteristics. His condition was such that I specially noticed it. He seemed to be laboring under a tremendous depression of spirits. I knew it was not the same Mr. Crandal I had known previously. I noticed a change in his expression. It was one of extreme seriousness and abstraction. I think the man was insane.

Cross-examination:

I had no business relations with Mr. Crandal. I was waiting about my own business in the office and saw him. He was
92 probably twenty or thirty feet away. I had desk room there. I had no business relations with him. I saw him very nearly every day, but had no special conversations with him. He was a hale fellow, well met man. It might have been a month—probably two or three weeks—before his death that I conversed with him last.

Q. Can you tell whether a man is sane or insane by looking him over?

A. I looked over the man for four years, and then could — form an opinion.

Q. How does an insane man look—how does he differ from a sane man?

A. The loss of his manner of expression as I had observed it previously.

93 MARTHA DOWNER, a witness called for plaintiff, testified as follows:

I was acquainted with Mr. Crandal in his lifetime. His wife is my sister. I had not seen him for a year until the Friday prior to his death, when I saw him for a short time. My home is in Iowa, and I was on my way east, and stopped there for a few hours. I arrived about seven o'clock in the morning, and I left at three in the afternoon; had very little talk with Mr. Crandal at that time. He appeared very much excited when I met him in the morning. He talked considerably, and commenced talking about his business; told me he was not well, and that he had not had a good night's sleep for two months. After breakfast he started for down town, saying, "I must be going;" said he could not stay. He says, "You know nothing about how I am troubled." He then took off his hat and came back, and we had a short talk. His face was very much flushed and his face was convulsed. I did not notice his eyes.

He said his whole life had been a mistake. He said his family had all turned against him, and he had not a friend in the world. He said, "Even my own family has turned against me." He said that he wished he could dispose of his horse-, and that he did not know what he could [do], and that *and that* everything was all wrong.

94 His condition made an impression on my mind for the reason that I never had seen in all my acquaintance with him or heard him talk in that way, or like as he did. He was at my house the last time I saw him before the Friday previous to his death, about a year before. A lady friend was traveling with me.

Q. Did you make any statement to that lady when you went away?

A. I did.

Q. Of the impression that he made on *his* mind?

A. Yes, sir.

Q. What statement did you make to her?

A. I said that Mr. Crandal did not——

Objected to.

The COURT: You have the right to ask her what he- belief or impression was as derived from her observation at the time. Does it make it any stronger to show the statement that she made?

COUNSEL FOR PLAINTIFF: It was a statement made at the time, not a statement made after that time.

The COURT: The supreme court has taken a very liberal view of the scope of examination of witness on that question. I think I will overrule and let her answer.

Q. What statement did you make to your friend after you left Mr. Crandal in regard to his condition?

95 Objection. Objection overruled. Exception by defendant.

Q. I said to her, "You have not seen Mr. Crandal to-day in his right mind, and I don't think he is." That was on the same day I saw him at his house. I don't know that I really formed any opinion as to his mental condition at that time any more than talking with a man that talked as he did, and so unusual to me that he could not be in his right mind.

Cross-examination:

I did not say I thought he was crazy, or sane or insane, but I said I thought he appeared very strange, and talked strange, and as I had never seen him before. I had not seen him for over a year. I did not talk to my sister, except to say I did not think Mr. Crandal was well; he did not look well. He was in a good deal of trouble about his business affairs. I had no conversation with him besides the one I have spoken [of.] I do not think he was at home more than an hour while I was there. He said that he would like to sell his property, and that he was in deep trouble and did not know what to do. If I had believed that he was insane at that time I probably should have said so to my sister.

96 MAY E. CRANDAL, a witness called for plaintiff, testified as follows:

My name is May E. Crandal. I am the daughter of Mrs. Crandal; Edward M. Crandal was my father. He was always a social, pleasant, and agreeable man with his family, and it seemed as though he could not do enough for us; he was always calm and collected, and never was frustrated at any time. Before his death I noticed a very great change. It commenced early in the spring. He was quiet and not willing to talk and not willing to answer questions; put us off and talked about something else not on the subject at all. He was usually a great sleeper; would go to bed early and was always up late to breakfast. A few days before his death, a week or so, he was downstairs early in the morning, and we remarked that it was very unusual for him to be down so early. Afterwards he would sit up late, until ten or half-past ten, and walk the floor and sit on the front steps. He said he could not sleep, and he would occasionally bring home something to eat, apples or something, and said he would take them upstairs and see if he would not sleep. I first noticed the change about the middle of May, and down until the time of his death. After that he was
97 very indifferent, and if he spoke to us it would be in an irritable way. I noticed a change in his appearance. He stooped, and his head sunk on his shoulder. His face was flushed, and his eyes bulged out of his head. He did not seem to see anything at all, and he was in a dazed condition. When pretending to read we could see that he was not reading and that his mind was not on his paper. On Saturday prior to his death, in the forenoon, we had some plumbers to work, and he would walk up and down the hall or in his room with a fan in his hand and his hat on. He did not seem to know what he was doing. In the afternoon he came into the stable, where I was. I had been out feeding the horses. He grasped me by the arm in a sort of convulsive way, and said, "May, it is very hard. I don't know what is to become of you. I don't know what is to become of us; but you will lose all your friends when they find out we have nothing to live on." I told him I did not consider such people friends. He said, "You will see; you don't see now; but you will see it, and you will not be
98 the same to your friends as you are now when you cannot do for them and are situated as we are now." His manner was very queer—very much excited and nervous. I went into the house and asked ma what she supposed *what* was the matter with pa; that he acted so queer; that he acted as if he was crazy. She said she didn't know; that I had better go back to the barn and ask my father to come into the house. I went back, but he was gone. The next morning he seemed a little brighter, but was very nervous and very quiet and not willing to talk; said he would not blame me if I did not pay any attention to him at all and have nothing to do with him; that he had always made a mistake. On the morning of the 7th of July I found him lying on the floor near the closet door. Mother was there. I went to him and took hold of his hand and

removed his suspenders and threw them in [the] closet. They were only tied once. Mother had removed him. I noticed a little bruise on his cheek and a little blood from his nose. Mr. Gaylord
99 was present perhaps an hour afterward. My impression the last time I saw my father was that he was insane. On the 4th or 5th of July, in the morning, he said he did not know but somebody would come in and take everything we had. I said I did not see how they could do that, and he said, "You don't understand; but they may."

Cross-examination:

I didn't know whether he referred to a sheriff or constable or robbers. I did not know what he did mean. I did not know but what he might refer to an officer coming to take thing- on a debt.

Q. That is your signature, is it? (Showing witness signature to proofs of death, and heretofore offered in evidence.)

A. Yes, sir; that is the manner in which he came to his death. He hung himself by the neck to the door-knob by his suspenders, and came to his death in no other manner than that. On Saturday that I speak of I did not tell my mother that I thought he was insane; I merely asked her what she thought was the matter. I never told her that he was insane. Things that indicated that he was insane was the way he acted; the way he grasped my
100 arm convulsively; it did not hurt me or leave any mark; he talked to me excitedly. It was some time in May that business was going wrong. His foot troubled him, as he walked a good deal. When my mother went out my father probably closed the door. His suspenders were attached to the knob in the closet, the inside knob of the closet door. He was lying in front of the closit when I saw him. His suspenders were not in a slip-noose. They were simply tied once to make a circle; that was all. I never talked to my mother about sending him to an asylum; only to get a physician for him to give him something to make him sleep. He employed the plumbers who were at work there Saturday; it was a leak in a pipe they were stopping.

Redirect examination:

He was not confined to his house on account of his foot after his first confinement. He was out a good deal after that and walked a good deal.

101 LORETTA M. CRANDAL, recalled, testified that on the Saturday prior to my husband's death my daughter May said: "Mam-a, what is the matter with papa? He acts as if he was crazy;" I said, "Yes, I am afraid your pa is insane; go and ask him to come right in and not go away.

O. P. CURRAN recalled for further recross-examination by defendant.

Q. Mr. Curran, on Saturday you stated that Mr. Crandal was insured in your company. That is a life company, is it not?

A. Yes, sir.

Q. What is the rate on a $10,000 policy for a man of Mr. Crandal's age at that time?

Objected to by plaintiff as improper cross-examination.

The COURT: What is the materiality of that, Mr. Bates?

COUNSEL FOR DEFENDANT: The materiality of it is that in arguing this motion from cases that are decided on life insurance policies I desire to show by this witness that the premium would be much greater than this policy; that life insurance would cost more.

102 The COURT: I don't think that the testimony that you seek to elicit can aid in the construction of this policy or that it can be used in the construction of this policy.

Objection sustained. Exception by defendant.

COUNSEL FOR PLAINTIFF: That is our case.

COUNSEL FOR DEFENDANT: Now, I will ask your honor to instruct the jury that under the law and the evidence in this case the plaintiff is not entitled to recover.

And thereupon the court entered the motion on behalf of the defendant to instruct that under the law and the evidence in this case the plaintiff is not entitled to recover; upon which motion, after full argument by counsel, both by plaintiff and defendant, the court ruled as follows:

The COURT: I am quite well satisfied what course the court ought to take in this case. It is an original case, as is shown by the absence of any authority which is precisely applicable or any case which is precisely similar. The case involves a considerable amount. These questions, which have been so ably and instructively argued at

103 the bar, ought to be determined only upon deliberate consideration. They are not questions which a court can, satisfactorily to counsel or to itself, dispose of in the hast- of a trial at *nisi prius*, and I think that the course which we ought to take with the case is this: To submit to the jury certain questions, taking answers to the questions, and then letting them say that if the court upon their findings of fact shall be of opinion, as a matter of law, that the plaintiff is entitled to recover, then they find for the plaintiff and assess the damage at such an amount. If the court shall be of opinion, as a matter of law, that the plaintiff is not entitled to a verdict, then they find for the defendant; that saves the rights of all parties and may avoid the necessity of another trial, because, fortunately, this case involves a sufficient amount to enable the party who shall ultimately be defeated to take the case to the Supreme Court.

The only question, I think, that can be called a controverted one here, as a question of fact to be submitted to the jury, is whether Mr. Crandal was sane or insane when he committed this act.

104 If the jury should find that he is insane, then there arises the question in the form in which it has been presented here by Mr. Bates, whether that insanity resulted from or coexisted with disease—whether the insanity was disease. In order to make the record

perfect it may be well for the jury to answer the questions as to whether there was an application for insurance, and whether this policy, which is in evidence, was issued, and whether the deceased came to his death by an act of self-destruction. Of course, those questions would be answered in the affirmative, and then the question would come whether at the time of self-destruction he was sane or insane. If the jury should find that he was sane that would end the case. If he was insane, then it would be a question for the court, on the interpretation of the policy, to determine whether the plaintiff or the defendant is entitled to judgment on the verdict.

COUNSEL FOR DEFENDANT: Now, I would like to put on some expert testimony, your honor.

The COURT: Well, the motion to instruct the jury to render a verdict for the defendant is overruled and exception by defendant.

105 Dr. S. V. CLEVINGER, a witness called on behalf of the defendant, testified as follows:

My name is S. V. Clevenger; I am a specialist in nervous and mental diseases in Chicago; have been a physician and specialist in these diseases in this city since 1879; was formerly pathologist in the Cook county insane asylum for a year and a half, and am now with the Alexian Brothers as physician in the mental and nervous diseases department, and I belong the Neurological Society of America and the American Microscopical Society and the Electrical Society of America.

Q. What is your opinion with reference to insanity, as to whether or not it is a disease?

Objected to.

The COURT: Do you wish to put that question into the case as a question of fact?

COUNSEL FOR DEFENDANT: As to whether it is a disease or not? I don't know as I want it passed upon by the jury, but I want it passed upon by the court; it is a question for the court.

The COURT: Very well.

106 A. There are several way- of regarding that question; primarily, probably, we should find what we mean by disease, in the ordinary acceptation of the term. Insanity is undoubtedly a disease of the mind, but it is a symptom of a bodily disease. Probably I can make that clearer by explaining that pain in itself is not a disease, but pain is a symptom of a bodily disease, and just as pain is a symptom of a disease, so insanity is a symptom of a bodily disease also. We cannot conceive of insanity without disease. The integrity of the brain in its healthy condition is prerequisite to its healthy condition. There are a great many medical authorities which sustain my position that insanity is a disease. I might cite Spitzka, Hammond, Kraft, Ebing, Greisinger, Buckwell, and Torke. The Hammond works are in front of you. Dr. Hammond cites quite a number, and to save trouble of direct reference they could be read from that. There are no particular organs of the body of

which insanity is a disease. There is no dictum that passes current to-day among the best class of specialists to the effect that the brain is always the seat of insanity, but not always the seat of its cause. For instance, a hemorrhage, a perfound
107 hemorrhage, may cause chronic melancholia and without any lesion in the brain, but it may be in a blood-vessel that may be wrong, so that the mental organism cannot work. Tumors may also cause insanity, according to their size and location; also inflammation in the brain may cause insanity; a sunstroke has done it, and certain diseases, such as rheumatism, St. Vitus dance, and syphilis notably is a cause of insanity which is produced by disseminated gummy tumors, and they may occur upon the skin or in some interior bodily part, such as the liver, that may cause insanity, or they may occur in the brain, and they will cause insanity. In insanity the functional organism of some bodily organ is invariably affected and through it the brain. Those quotations from Spitzka and Hammond might be read, if you wish.

Cross-examination:

I shall decline to define insanity except in a very approximate way, except that it is an aberration of the mind, but there is no such thing as perfect definition of insanity and it is folly to attempt one, and the best class of specialists have abandoned the attempt.
108 You cannot define life; you cannot define health. Insanity is a symptom of a disease of the body; it is a disease of the mind, and the mind is a bodily function. Physicians speak of mental diseases and of bodily diseases in common parlance. Some have written on bodily diseases and some on mental diseases. In those authors the term mental disease is not necessarily used to describe insanity.

Q. As distinguished from bodily diseases?

A. Yes; I concede that, but there are other definitions of bodily diseases as well—diseases of the liver, diseases of the viscera, etc. Mental diseases is a convenient classification of different kinds of bodily disease.

Q. Then, if a person should speak of another person as suffering from a mental disease, you would not think he was suffering from bodily disease?

A. That would depend. I treat very often cases of mental disease through their bodies.

Q. Then, if a person speaks of a bodily disease, you would not conclude he was speaking of mental disease?

A. That would depend.

Q. If a person was speaking of a person suffering from bodily disease would you suppose that he was suffering from insanity?
109 A. No, not necessarily; but it might include it.

Q. In the ordinary acceptation of the term?

A. Not necessarily.

Redirect examination:

A mental disease is in consequence of some bodily disease.

Q. Can a man have a mental disease without having a bodily disease?

A. I think it is utterly impossible.

Recross-examination:

Q. If a non-professional man should speak of a man having a bodily disease, should you think that he had insanity?

A. No; and yet insanity might be included in the bodily disease.

Q. You would not expect a non-professional man, who was unacquainted with scientific truths or facts, to mean that?

A. No, sir; in general parlance, but then the public have very erroneous ideas in regard to disease.

110 Dr. JOSEPH L. GRAY, a witness called for defendant, testified as follows:

My name is Joseph L. Gray; I am a physician in Chicago; my specialty is nervous and mental diseases; these have always been my specialties; insanity is usually considered to be a manifestation of disease of the brain; I do not believe there is any insanity without disease of the brain.

Cross-examination:

Q. Would you expect that if an ordinary man spoke to you of a bodily disease—I mean a non-professional man, a business man—who is not expected to know the scientific truths lying below the expression, you expect him to include insanity?

A. I should not.

Redirect-examination:

Q. If a man should speak to you about a person having mental disease, would you understand that he me-nt brain feavor or insanity, or would you consider that he me-nt any disease of the brain?

A. I should consider that he me-nt any disease of the brain, or of the nervous system outside of the brain.

Q. That would include mental disease?

A. Yes, sir.

Q. Is there any mental disease that is not a bodily disease?

A. I don't know of any.

Q. You know of none?

A. No, sir.

111 MATTHEW M. GAYLORD, a witness called for defendant, testified as follows:

My name is Matthew Gaylord; I am a solicitor for insurance companies, both life and accident. A man of 55 years of age, who could pass the examination, would have to pay as premium per year, for a life policy of $10,000, about $600.

The foregoing was all the evidence introduced on the trial of this cause.

After instructions to the jury, to which no exceptions were made, the jury rendered the following verdict:

112 *Verdict.*

U. S. Circuit Court, Northern Dist. of Ills.

LORETTE M. CRANDAL

vs.

ACCIDENT INSURANCE COMPANY OF NORTH AMERICA.

1st Question. Did Edward M. Crandal, on the 23d day of May, 1884, make to the defendant company the application for accident insurance which is in evidence?

Answer. Yes.

2d Question. Did the defendant company, on the 23d day of May, 1884, issue to Edward M. Crandal the policy of insurance in evidence, insuring him against death from bodily injuries effected through external, accidental, and violent means, and based upon the application before mentioned?

Ans. Yes.

3d Question. Were the premiums which accrued upon the policy prior to the death of Edward M. Crandal fully paid, and was the policy in force at the time of his death?

Answer. Yes.

113 4th Question. Did Edward M. Crandal hang himself on the 7th day of July, 1884, and did that act result in his death on that day.

Answer. Yes.

5th Question. Was Edward M. Crandal sane or insane at the time of the act of self-destruction?

Answer. He was insane.

6th Question. Were notices of the death of Edward M. Crandal and proofs of death loss given and furnished by the beneficiary named in the policy to the defendant company?

Answer. Yes.

And if, upon the foregoing facts so found, the court is of opinion, as matter of law, that the plaintiff is entitled to recover, then we find the issue in favor of the plaintiff, and assess her damages at the sum of $10,853.33. If, as matter of law, the court is of opinion that defendant is entitled to recover, then we find the issue in favor of the defendant.

JOHN M. RHODES,
Foreman.

114 Whereupon the defendant, by its counsel, then and there moved the court to set aside the verdict so rendered and grant a new trial in this cause, and filed the following reasons in writing for this motion, to wit:

In the Circuit Court of the United States for the Northern District of Illinois. January Term, A. D. 1886.

LORETTA M. CRANDALL
vs.
ACCIDENT INSURANCE COMPANY OF N. A. } Assumpsit.

And now comes the defendant, by Thomas Bates, its attorney, and moves the court to set aside the verdict rendered and to grant a new trial in this cause, and for grounds *of* this motion the defendant shows to the court the following, to wit:

(1.) The court admitted on the trial improper evidence on the part of the plaintiff.
(2.) The court refused to admit proper evidence offered by the defendant.
(3.) The court improperly overruled defendant's motion to instruct the jury to render verdict for said defendant.
115 (4.) The court erred in submitting the question of Edward M. Crandal's insanity at the time of his death to the jury.
(5.) The verdict is contrary to the evidence in the case.
(6.) The verdict is contrary to the law.
(7.) The verdict is contrary to the law and the evidence in the case.

But the court denied the motion and gave judgment upon the verdict against the defendant; to which decision of the court by denying said motion the defendant then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record the defendant tenders this its bill of exceptions and prays that the same may be signed and sealed by the judge of this court pursuant the statute in such case made, which is done accordingly this 28th day of April, A. D. 1886.

CHARLES E. DYER, *Judge.* [SEAL.]

Endorsed: Filed April 28, 1886. Wm. H. Bradley, clerk.

116 Afterwards, to wit, on the nineteenth day of May, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

LORETTE M. CRANDAL
vs.
THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA. } Assumpsit.

On motion of the defendant, by its attorney, it is ordered that the writ of error herein operate as a supersedeas upon filing the appeal bond herein.

117 On the same day, to wit, on the nineteenth day of May, 1886, there was filed in said clerk's office a bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Accident Insurance Company of North America and The Guarantee Company of North America, are held and firmly bound unto Loretta M. Crandal in the full and just sum of fifteen thousand (15,000) dollars, to be paid to the said Loretta M. Crandal, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth (5th) day of May, in the year of our Lord one thousand eight hundred and eighty-six (6).

Whereas lately at a term of the United States circuit court for the northern district of Illinois, in a suit depending in said court between Loretta M. Crandal, plaintiff, and The Accident Insurance Company of North America, defendant, a judgment was rendered against the said The Accident Insurance Company of North America for the sum of ten thousand eight hundred and fifty-three dollars and thirty-three cents ($10,853.33), and the said The Accident Insurance Company of North America, defendant, having obtained

118 a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said Loretta M. Crandal, plaintiff in said suit, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Accident Insurance Company of North America, defendant, shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE ACCIDENT INSURANCE COMPANY
OF NORTH AMERICA,
By E. RAWLINGS, *Managing Director.* [SEAL.]
FRANK F. PERKINS, *Ass't Secretary.*
THE GUARANTEE CO. OF
NORTH AMERICA,
[SEAL.] By E. RAWLINGS, *Managing Director.*
JAMES GRANT, *Secretary.*

Sealed and delivered in presence of—
W. FROST.
D. F. BURKE.

Approved by—
H. W. BLODGETT, *Judge,*

Endorsed: Filed May 19, 1886. Wm. H. Bradley, clerk.

119 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Lorette M. Crandal is the plaintiff and The Accident Insurance Company of North America is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this second day of June, 1886.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

120 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is before you in said circuit court, between Loretta M. Crandal, plaintiff, and The Accident Insurance Company of North America, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said The Accident Insurance Company of North America, as by its complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of May, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 110th year.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY,
Clerk of the U. S. Circuit Court for Northern Dist. of Illinois.

[Endorsed:] Supreme Court of the United States. The Accident Insurance Company of North America, plaintiff in error, *vs.* Loretta

M. Crandal, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

121 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Lorette M. Crandal, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein you are defendant in error and The Accident Insurance Company of North America is the plaintiff in error, to show cause, if any there be, why the judgment mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Charles E. Dyer, district judge, this 13th day of May, in the year of our Lord one thousand eight hundred and eighty-six.

CHAS. E. DYER, *Judge.*

We hereby accept service of this citation this 19th day of May, 1886.

HOUSE, FRY & BABB,
Pl'ff's Att'ys.

[Endorsed:] Supreme Court of the United States. Lorette M. Crandal *vs.* The Accident Ins. Co. of North America. Citation to October term, A. D. 1886. [In pencil:] May 19. Enter order that writ of error operate as a supersedeas on filing bond. H. W. P.

122 *Assignment of Errors.*

First. The court erred in overruling plaintiff in error's objection to the evidence of Edward M. Crandal's insanity.

Second. The court erred in overruling motion made at the close of plaintiff's evidence to instruct the jury that under the law and the evidence the plaintiff was not entitled to recover and their verdict should be for the defendant.

Third. The court erred in its construction of the contract and in finding that, as a matter of law, the contract or policy of accident insurance covered the case shown by this record.

Fourth. The court erred in finding that Edward M. Crandal's death was caused by accidental injuries alone and to the exclusion of every other cause.

Fifth. The court erred in its finding that Edward M. Crandal was at the time of his death insane to that degree that he was unable to distinguish either the moral or physical effects of his act.

123 Sixth. The court erred in finding that the death of Edward M. Crandal resulted from bodily injuries effected through external, accidental, and violent means, within the true intent and

meaning of the policy in suit, and was not caused, wholly or in part, either directly or indirectly, by bodily infirmities or by disease.

Seventh. The court erred in finding that Edward M. Crandal's death was not the result either of suicide or of self-inflicted injuries.

Eighth. The judgment is contrary to the law.

Ninth. The judgment is contrary to the evidence.

Tenth. The judgment is not sustained by the law or by the evidence in the case.

Plaintiff in error therefore prays that said judgment may be reversed.

BATES, BROUGHAM & TUTTLE,
Attorneys for Plaintiff in Error.

EMERSON B. TUTTLE,
Of Counsel.

Endorsed on cover: N. Illinois C. C. U. S. No. 1126. The Accident Insurance Company of North America, plaintiff in error, *vs* Loretta M. Crandal. Filed October 12, 1886.

120-527

FILED
DEC 20 1886
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

No. 1128.

THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA,
Plaintiff in Error,
vs.
LORETTA M. CRANDAL.

Error to the Circuit Court for the Northern District of Illinois.

BRIEF FOR PLAINTIFF IN ERROR.

BATES, BROUGHAM and TUTTLE,
ATTORNEYS FOR PLAINTIFF IN ERROR.

EMERSON B. TUTTLE,
OF COUNSEL.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1886.

No. 1126.

THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA,
Plaintiff in Error,
vs.
LORETTA M. CRANDAL.

Error to the Circuit Court for the Northern District of Illinois.

STATEMENT OF THE CASE.

On the 23d day of May, 1884, Edward M. Crandal made written application to the Accident Insurance Company of North America, plaintiff, for accident insurance, which written application is set out in full on pages 22 and 23 of record, and recites as follows:

"The undersigned hereby applies for a policy of in-
"surance against bodily injuries, effected through exter-
"nal or accidental violence, said policy to be based upon
"the following facts, which I hereby warrant to be
"true:"

The 15th condition of said application reads as follows:

"I am aware that this insurance will not extend to "hernia or any bodily injury of which there shall be no "external or visible sign, nor to any bodily injury hap- "pening *directly or indirectly in consequence of disease*, "nor to death or disability caused *wholly or in part by* "*bodily infirmities or by disease*, or by the taking of "poison, or by any surgical operation or medical or "mechanical treatment, *nor to any cause except when the* "*accidental injury shall be the proximate and sole cause of* "*disability or death*."

This application was signed by Edward M. Crandal, and thereupon, in consideration of the sum of $50, being the premium of this accident policy for one year, the plaintiff in error issued to him a policy of accident insurance, in the principal sum of ten thousand dollars ($10,000), which policy, together with its terms and conditions, is fully set out on pages 2, 3, 4 and 5 of record, and which reads, in part, as follows:

"In consideration of the warranties made in the ap- "plication for this insurance, and of the sum of fifty "dollars ($50), this company hereby insures Edward "M. Crandal, by occupation, profession or employment, "president of the Crandal Manufacturing Co., residing "in Chicago, county of Cook, and State of Illinois, "hereafter styled the insured, in the principal sum of "ten thousand dollars ($10,000), for the term of twelve "months, ending on the 23d day of May, in the year of "our Lord, 1885, at twelve o'clock noon.

"The said sum insured to be paid to his wife, Lorette "M. Crandal, or his legal representatives, within thirty "days after sufficient proof that the insured at any "time within the continuance of this policy shall have "sustained bodily injuries effected through *external, ac-*

"*cidental* AND *violent means, within the intent and meaning* "*of this contract*, and *the conditions hereunto annexed*, "and such injuries *alone* shall have occasioned death "within ninety days from the happening thereof.

"Or, if the insured shall sustain bodily injuries by "means as aforesaid, which shall, *independently of all* "*other causes*, immediately and wholly disable and pre- "vent him from the prosecution of any and every kind "of business pertaining to the occupation under which "he is insured; then on satisfactory proof of such in- "juries he shall be indemnified against loss of time "caused thereby, in the sum of fifty dollars ($50) per "week, for such period of continuous total disabil- "ity as shall immediately follow the accident and in- "juries as aforesaid, not exceeding, however, twenty-six "consecutive weeks from the time of the happening of "such accident.

"He is insured under classification 'Preferred,' but "it is understood and agreed that in the event of his "being either fatally injured or otherwise disabled, in "consequence of his engaging either temporarily or "otherwise in any act or occupation of a higher or "more hazardous classification, according to this com- "pany's tariff, or if not specially mentioned in the com- "pany's tariff, approximating thereunto, this insurance "shall not be forfeited or voided, and he shall receive "compensation to an amount proportionate to that "which the premium he has paid would insure him "under such higher classification."

The second condition of said policy reads, in part, as follows:

"Provided always that this insurance shall not extend "to hernia, nor to any bodily injury of which there shall

" be no external or visible sign, *nor to death or disability* " *which may have been caused, wholly or in part,* by *bodily* " *infirmities or disease.* * * * *And no claim shall be* " *made under this policy when the death may have been* " *caused by* * * * *suicide,* * * * or by freezing, " or sunstroke *or self-inflicted injuries.*"

Said policy also provides: " that the insured shall use " due diligence for personal safety and protection."

On the 31st day of July, 1884, plaintiff in error received from defendant in error proofs of death of Edward M. Crandal, which proofs are set out on pages 24 to 28 inclusive, of record, in which proofs of death Mary E. Crandal, a daughter of Edward M. Crandal, swears that at about six o'clock on the morning of the 7th of July, 1884, her father, Edward M. Crandal, hung himself by his neck in his own sleeping-room, and that his death was occasioned from hanging by the neck, while, as affiant believes, temporarily insane. And in answer to the tenth question in said proof of death, she says:

" After my mother had arisen in the morning Edward " M. Crandal hanged himself by means of a pair of " suspenders attached to the door-knob in his sleeping- " room.

" Affiant was called to his room by screams from her " mother, and assisted in loosening the body from that " situation. Affiant immediately sent for the physician, " who arrived shortly afterwards, but at that time he " was beyond the reach of help. Affiant believes that " the said Edward M. Crandal committed the act while " insane and incapable of distinguishing either the " moral or physical effects of such act."

In said proofs James N. Hyde, the attending physician, says that death was occasioned by suicidal strangulation by suspenders from the knob of the door.

The claim made under said policy was rejected by said company, as shown by their letter of Chicago, July 31, 1884, on page 28 of record, which reads as follows:

"Chicago, July 31, 1884. Mrs. Lorette M. Crandal, "615 Indiana ave., Chicago. Madam: We are in re- "ceipt of proofs of death of your late husband, Edward "M. Crandal, who was insured in this company under "policy No. 70,897, and from the statement in said proof "there would appear to be a misapprehension as to the "character of the policy, which is a policy of accident "insurance, not life insurance.

"Mr. Crandal's death was self-inflicted, and therefore "was not the result of an accident, and if you will con- "sult legal advice you will see that you have no claim "on this company."

"Regretting, sincerely, madam, the necessity of this "letter, more especially as regards the circumstances "that call for it, we remain, respectfully, Larrabee "Bros., Managers Accident Insurance Company."

Thereupon suit was brought against said company by defendant in error in the United States Circuit court for the Northern district of Illinois, on the 17th day of January, 1885. Declaration in the ordinary form was filed, to which defendant plead the general issue, and in January, 1886, the case came on for trial.

Upon a hearing before the court and a jury it was shown that Edward M. Crandal hanged himself to the door-knob in his sleeping-room, by his suspenders, and the defendant in error sought to establish the fact that

at that time said Crandal was insane, to which evidence of insanity counsel for plaintiff in error objected, on the ground that even although Crandal was insane at that time, still the company would not be liable under an accident policy of insurance, upon which objection the court ruled as follows, page 60 of record:

"I think the court will prefer to have the evidence "put in, preserving any right of the defendant in object- "ing to the testimony, and then pass on the question "afterwards; so the reporter may note that this testi- "mony and the testimony of any and all witnesses that "may be called in behalf of the plaintiff, of the char- "acter of that sort to be elicited from this witness, is "objected to on the ground that it is immaterial and "irrelevant. The testimony is taken subject to the ob- "jection, which will be hereafter considered and ruled "upon by the court."

And subject to the company's exception, testimony was taken as to the state of mind of Edward M. Crandall at the time he hanged himself and at the close of the plaintiff's evidence in the court below the counsel for the insurance company asked the court to instruct the jury that under the law and the evidence in this case the plaintiff is not entitled to recover, and their verdict should be for the defendant, which motion was overruled by the court and exception taken by said company.

The court, however, stated that in his opinion the only question which should be left to the jury was the question of whether at the time of his suicide Edward M. Crandal was insane, and that the jury should find a conditional verdict to the effect that if the court should hereafter find that as a matter of law the com-

pany was liable, then their verdict was for the plaintiff, and assess the damages at the amount of the policy with interest; but if the court should find as a question of law, that under its contract the insurance company was not liable, that then they should find for the defendant.

Thereupon the court gave leave to the insurance company to introduce the evidence of experts to show that insanity is a disease, after the hearing of which the jury returned a verdict fully shown on page 11 of record, in which they found that the insurance company issued said policy to Edward M. Crandal; that it was based upon the application before mentioned; that the premium was paid; that the said Crandal hung himself on the 7th of July, 1884; and that said hanging did result in his death; and that he was insane at the time; also that notice of his death and proofs of death were furnished by the beneficiary to the company, to which verdict is added the following:

"But if upon the foregoing facts so found, the court "is of opinion as a matter of law, that the plaintiff is "entitled to recover, then we find the issue in favor of "the plaintiff and assess the damages at the sum of "$10,853.33.

"If, as a matter of law, the court is of opinion that "defendant is entitled to recover, then we find the issue "in favor of the defendant."

After considering the case for nearly two months, the court on the 26th of March rendered his opinion, in which he held the company liable. Motion for new trial was made and overruled, and judgment was entered against the insurance company for the amount of said verdict, with costs.

ERRORS ASSIGNED ARE AS FOLLOWS:

First. The court erred in overruling plaintiff in error's objection to the evidence of Edward M. Crandal's insanity.

Second. The court erred in overruling motion made at the close of plaintiff's evidence to instruct the jury that under the law and the evidence the plaintiff was not entitled to recover, and their verdict should be for the defendant.

Third. The court erred in its construction of the contract and in its finding that, as a matter of law, the contract, or policy of accident insurance, covered the case shown by this record.

Fourth. The court erred in finding that Edward M. Crandal's death was caused by accidental injuries alone and to the exclusion of every other cause.

Fifth. The court erred in its finding that Edward M. Crandal was, at the time of his death, insane to that degree that he was unable to distinguish either the moral or physical effects of his act.

Sixth. The court erred in finding that the death of Edward M. Crandal resulted from bodily injuries effected through external, accidental and violent means, within the true intent and meaning of the policy in suit, and was not caused, wholly or in part, either directly or indirectly, by bodily infirmities or by disease.

Seventh. The court erred in finding that Edward M. Crandal's death was not the result either of suicide or of self-inflicted injuries.

The judgment is contrary to the law. The judgment is contrary to the evidence. The judgment is not sustained by the law or by the evidence in the case, and the plaintiff in error therefore prays that said judgment may be reversed.

BRIEF AND ARGUMENT.

THE COURT ERRED IN ITS CONSTRUCTION OF THE CONTRACT, AND IN ITS FINDING THAT THE POLICY OF ACCIDENT INSURANCE COVERED THE CASE SHOWN BY THIS RECORD.

This policy or contract insured Edward M. Crandal against death or disability by *accident* for the period of one year. The policy, by its terms, provides that it insures Edward M. Crandal against bodily injuries effected through *external, accidental* and violent means, *within the true intent and meaning of the contract and the conditions* thereunto annexed, and that such injuries *alone*, independently of all others, shall occasion death or disability.

It is further stipulated and agreed and made a part of the contract that the company would not be liable for death or disability caused *wholly or in part by bodily infirmities or by disease*, and that no claim should be made under this policy when the death or injury was caused by *suicide or by self-inflicted injuries*, and the application in this case, which was signed by Crandal, and which was the basis upon which the contract was made, provides that the company should not be liable in case of bodily injury occasioned either *directly or indirectly* in *consequence of disease*, nor to death or disability occasioned *wholly* or in *part* by *bodily infirmities* or *by disease*, nor in *any case*, except when the *accidental injury* shall be the *proximate and sole cause* of disability or death.

It has been held by this court that contracts should

receive that construction which the language used fairly warrants, and that in construing a contract we should consider the meaning and intent of the parties. We claim that this case is not brought within the true spirit or the letter of this contract, and that if the construction is given to this contract which the language used fairly warrants, or if the construction is given to this contract, *according to the intention of the parties*, as shown by the wording and language of this policy, that this company cannot be held liable in this action. And we insist that it is only by distorting and twisting the English language, so that it is made to convey a meaning altogether different from its ordinary interpretation, that this policy could be held to cover a case like this.

The policy provides that the injuries must be effected through *external* means; that is, that the injuries must come from without, and must be inflicted, not by the person himself, but by some other person or agency; that these external injuries must be *accidental* within the true intent and meaning of the contract, and the conditions thereunto annexed, and those injuries *alone*, without the intervention of any other causes or agencies, must cause the death. The conditions of the policy are, that if his death is caused *wholly or in part by bodily infirmities or by disease*, and the language of the application (which is also made a part of this contract) is that if the injuries or death occur either *directly or indirectly by bodily infirmities or by disease*, that then the company is not liable. The intention and plain meaning of the words used being that if bodily infirmities or disease tend to any degree or in any manner to *set in operation* those

agencies which produce death, the company is not liable; or, if without the intervention of that disease or of that infirmity, in whole or in part, either directly or indirectly, those agencies would *not* have operated to produce death or disability, then the company is not liable.

The policy further provides that the company is not liable in case of suicide; and knowing at that time, from the cases which had been decided in the different courts, that suicide simply meant the felonious taking of one's own life whilst sane; and for the purpose of protecting itself in the case of insane suicide, there was added to this contract the further condition that, if the death or suicide was occasioned by *self-inflicted injuries*, that then the company would not be liable.

It is claimed that this was not suicide, simply because, they say, the man was to a certain degree insane at the time of his death; but "suicide" and "self-inflicted injuries," as the terms are used in this contract, are not synonymous terms; and we insist that if Crandal's death was not the result of suicide, it was the result of self-inflicted injuries within the true intent and meaning of this contract of insurance.

It will be noticed that the words "self-inflicted injuries" are in capitals in this contract, and that they bear a special significance apart from the word "suicide." Also, that the term "self-inflicted injuries" does not follow immediately after the word "suicide," but other means of death are provided for, thereby establishing a distinct and intentional difference between the two terms. It is fair to presume that the object of the term "self-inflicted injuries" was to provide against what might not be comprehended by "suicide" in law.

It is said that there is no such thing as an insane suicide, but can it be held, assuming a man to be insane, that he cannot die from "self-inflicted injuries"? And is it a fair construction of this policy to hold that the word "suicide" and the other term, "self-inflicted injuries," when used separately and apart from each other, were not intended to convey a different meaning?

It is true the term, "By his own hand," when used *alone* in a life insurance policy, has been construed to mean suicide, but in this case, where both the term suicide and self-inflicted injuries are used, such a construction would not obtain.

EDWARD M. CRANDAL'S DEATH WAS IN NO MANNER ACCIDENTAL.

To call it an accident simply reverses the ordinarily accepted meaning of that word. In the case of *Mallory* v. *Travelers' Ins. Co.*, 47 N. Y., 52, it was held that death from the effect of a sunstroke is not death from accident, but is caused by disease. In *Harris* v. *Trav. Ins. Co.*, reported only in the Am. L. Rev., Vol. 7, p. 589, the deceased was a fireman who was accidentally buried under a fallen wall and was rescued without apparent injuries, and continued his work for three months, when he took poison.

In a suit under an accident policy to recover the insurance, on the ground that the accident rendered him insane, it was not only held to be suicide, if he was sane, but if he was insane it was not covered by the policy.

In *Prov. L. Ins. Co.* v. *Martin*, 32 Md., 310, it is held

that an accident is an unusual and unexpected result attending the performance of a usual and necessary act.

In the case of *Ins. Co.* v. *Burroughs*, 69 Pa. State, 43, an accident is defined to be an unexpected event which happens as by chance. It is held that "violent "and accidental" as used in this policy are equivalent in meaning to accidental violence, and a full discussion of what an accident is will be found in *Snyder* v. *Ins. Co.*, 24 Wis., 28.

In the case of *Pollock* v. *Accident Ass'n.*, decided in the Pennsylvania Supreme court, February 12, 1883, reported in Albany L. J., Vol. 28, page 518, the court say: "A mutual benefit association certificate, which was "limited to death or injury caused by external, violent "and accidental means, contained a clause declaring "that the benefits under it should not extend to any "death or disability which might have been caused by "the taking of poison.

"It was not necessary to defeat the liability for death "by poison that the poison be taken with the intention "to produce death. If the poison was innocently taken "and without any knowledge of the injurious effect "which it was likely to produce, the insured could not "recover."

In the case of *Bayless* v. *Trav. Ins. Co.*, of Hartford, upon an accident policy which contains the same condition as ours, and in the same words, reported in 14th Blatch. Circuit Court Reports, page 144, the opinion of the court is in part as follows: "The insured died on "the 20th of November, 1872. A week or so previous to "his death he was suffering from influenza, the result of "a cold, and was then treated therefor by his physician.

"The Friday before his death he was attacked by "cholera morbus, which seemed to completely destroy "his nervous system and leave him in a wholly nervous "state. On the Monday following he was again better "and proposed to go to his work, and asked his physi- "cian, on account of restlessness, to give him some "opiate for a quiet night's sleep. The physician ordered "a preparation of opium and directed him to take "twenty drops of it before going to bed. He was at "this time taking chloral under the same medical ad- "vice, and the opium was directed to be taken in addi- "tion to the prescribed dose of chloral.

"That night the insured took the prescribed dose of "chloral, and, as may be inferred from the facts shown, a "dose of opium also. There is no direct evidence as to "the quantity of opium taken, but 'I shall consider the "case,' says the court, 'as if the evidence of the symp- "toms that followed and the actions of the insured were "sufficient to warrant the jury in finding, that through "inadvertence, the insured took more opium than he "intended to take, and such a quantity that his death "was caused thereby It is by no means clear that such "finding would be warranted by the evidence given, "and it is certain that no conclusion more favorable to "the plaintiff can be drawn from the proofs.

"I am, therefore, to determine whether, as a matter of "law, such a death is within the scope of the policy sued "on. Upon this question my opinion is adverse to the "plaintiff.' * * * The contention in behalf of the "plaintiff is, that the opium was not administered by "the hand of the physician, and moreover, was not the "dose directed by the physician to be taken, but was a "dose taken by the insured upon his own judgment, and

" that these conditions take the case out of the excep-
" tion in the policy. But it must be conceded that the
" opium which caused the death was taken by the in-
" sured with the object of allaying the excitement from
" which he was suffering. Certainly, then, this was dis-
" ease. The advice of the physician had been taken
" as to its cure, and it is equally certain that there was
" a treatment for this disease. * * *

" The opium was taken with no other object than to
" effect the results which the physician had advised
" would be obtained by using opium. Under these
" circumstances, the fact that the patient deviated from
" the amount prescribed by the physician and took a
" larger dose than had been directed, does not change
" the character of the act. The object of the insured
" in taking the opium was to cure or *else to kill*, and the
" court held the company not liable."

Now is this not a stronger case than the case at bar? Suppose that Crandal on the night prior to his death had taken an overdose of opium (as from the evidence it appears that he did take bromide) for the purpose of obtaining sleep and for the purpose of curing that *disease* from which he then suffered, namely, insanity, and from that overdose of opium death resulted, would not plaintiffs have a stronger case than the one at bar, and would not the company's liability be much more clearly fixed than it is from the fact that under the influence of the disease of insanity, and *impelled* by that disease alone, he hung himself? And if under the circumstances stated, he had taken an overdose of opium or bromide, it would have brought this case *exactly* within the facts of the case of Burroughs against the Travelers' Insurance Company.

In that case it was held not to be an accident, even if he took it unintentionally, and certainly that was a stronger case for plaintiff than the one at bar. These cases are quoted merely to show that even where the facts tend much farther towards showing an accident than the facts in our case, that still the courts have held under policies exactly like ours, that it was not an accident within the true intent and meaning of the term, and that the companies were not liable.

It is assigned for error that the court erred in overruling the insurance company's motion, made at the time the plaintiff below closed her case, to instruct the jury that under the law and the evidence in this case their verdict should be for the defendant. And on the trial of the case there was objection made to all of plaintiff's evidence which showed or tended to show insanity on the part of Edward M. Crandal at the time of his death (which objection was overruled and exception taken), on the ground that even although he might be insane, and although it was claimed by plaintiff below that had he not been insane his death would not have occurred, that insanity is a disease and that *this disease* was the *cause* of his death.

It is conceded by the learned judge who tried this case that insanity is a disease, and it is conceded that the policy provides that where disease or bodily infirmities, either directly or indirectly, in whole or in part, cause the death or disability, that the company is not liable. And all the way through it has been contended by plaintiff below that the disease of insanity created an *uncontrollable impulse* to take his own life which Edward M. Crandal could not resist; and that it was

this disease of insanity which impelled him to hang himself; and still they claim that disease was not wholly or in part, either directly or indirectly, or in any manner the *cause* of his death.

Insanity is a Disease.

Disease is defined by Webster to be: "Derangement "of any of the vital functions by which their natural "action is interrupted or disturbed, and causing or "threatening pain and weakness. A morbid or unhealthy "condition." Infirmity is defined by Webster to be: "The state of being infirm. Imperfection or weakness. "A disease. A malady. Infirmity of the body. Weak-"ness. Feebleness, failure. Foible. Defect. Debility. "Imbecility. Imperfection."

In Ray's Medical Jurisprudence of Insanity, page 152, it is stated that, "Insanity observes the same psycho-"logical laws *as other diseases*. Notwithstanding the air "of mystery which ignorance and superstition have "thrown around *this disease*, it cannot be said to present "anything very strange or peculiar. * * * It arises "from a morbid affection of organic matter, and is just "as much, and no more, an event of special Providence "as other diseases. * * *

"It follows the same course of incubation, develop-"ment and termination in cure or death, as other "diseases, sometimes lying dormant for months, pos-"sibly years, obscure to others and perhaps unsuspected "by the patient himself, and at other times suddenly "breaking out with little premonition of its approach, and "again after being repeatedly warded off by precautions

"and remedies, finally establishing itself in its clearest "appearance, just as consumption sometimes begins its "ravages so slowly and insidiously as only to be observ- "able to the most practiced observer for years together, "while in another class it proceeds from the beginning "with a progress as rapid as it is painfully manifest." * * * "When fully developed insanity, *like other "diseases*, gives rise to severe constitutional disturbance, "or it may scarcely affect the system at large, as inflam- "mation of the digestive organs may cause fever, and "intolerable pain, or lead its victim slowly to the grave, "hardly conscious of its presence and in the enjoyment "of comparative health. Like other diseases insanity "is made the object of remedial treatment and also "yields to the judicious administration of medicines, "as sufficient proof of its material origin. * * * "It may proceed to its successive stages with a severity "ever increasing to the end, or, like many other affec- "tions of the nervous system, its progress may be in- "terrupted by periods more or less long of relaxation "from its ordinary force, from a mere abatement of the "constitutional excitement and mental extravagance, to "complete intermission of the disease, when the patient "is comparatively restored to all his original sound- "ness. * * *

"Whether proceeding from hereditary predisposition, "or maternal influences during gestation; from the "irritation produced by diseases of other parts, or by "external injuries; by the excessive or deficient exercise "of the mind; from great predominance or indulgence "of some of the faculties with a small endowment, to "the neglect of the rest; from improper or insufficient "enjoyment of the air; from the unbridled license of

"the passions, or the habitual use of intoxicating "drinks, we see the influence of causes precisely analog- "ous to those which give rise to other diseases. * * *

"In common with other diseases it is benefited by "proper air and exercise, cheerful conversation, friendly "sympathy and affection, the employments which furn- "ish a healthful play to the whole system, and abstract "the patient from the contemplation of his own condi- "tion. In short, throughout the whole history of mania "in its various forms we clearly discover the evidence "of a *bodily disease*, of a suffering organ. * * * "*Mania then being a a disease and governed by the same* "*pathologieal laws as other diseases*, it will be incumbent "on us to give some account of its symptoms."

In section 54, page 82 of the same work it is said that, "The dissections of many eminent medical observers, "among whom it is enough to mention the names of "Grebing, Gall, Spurzheim, Calneil, Foville, Falret, "Boyle, Esquiral, Georget and Parchappe, place it be- "yond a doubt, and no pathological fact is better estab- "lished, that *in all cases of insanity there are lesions of* "*the brain, and that insanity is a bodily disease of the* "*brain.*"

It will be found that this is held all the way through Ray's Medical Jurisprudence of Insanity, which is regarded a standard text book by legal writers in this country.

Spitka, in his work on insanity, holds that it is a disease and on page 15 he says:

"Insanity is a term applied to certain results of *brain* "*diseases* and brain defect which invalidate mental in- "tegrity."

In Dr. Hammond's "Treatise on Insanity," page 263, he defines insanity as the definition is given by many eminent authorities, and says:

"Insanity *is a chronic disease*, free from fever, in which "the ideas and the acts are under the control of an "irresistible power, and a change taking place in the "manner of feeling, conceiving, thinking and acting, "peculiar to the individual in his character and in his "habits."

Professor Gilman, in his book entitled, "*Relations of "the Medical to the Legal Profession*" on page 20 says that, "*Insanity is a disease of the brain* by which the "freedom of the will is impaired."

Dr. Thomas K. Cruse in his journal, *Psychological Medicine*, April number, 1872, page 267, defines insanity to be, "A physic manifestation of brain disease."

Dr. Hammond, in his own work on page 265, after giving very many definitions of eminent authorities, as above quoted, gives his own definition by saying:

"I will dismiss the further consideration of this divis- "ion of the subject by stating that my own idea of in- "sanity is based entirely on the fact that as a healthy "mind comes from a healthy brain, so a diseased mind "*comes from a diseased brain*, and I would define it as a "manifestation of disease of the brain characterized by "a general or partial derangement of one or more "faculties of the mind and in which, while conscious- "ness is not abolished, mental freedom is weakened, "perverted or destroyed."

It is practically conceded by the learned counsel for plaintiff below that insanity is a disease, and nowhere

in this record is that fact denied, but, on the contrary, Dr. Clevinger and Dr. Gray, both of whom are eminent experts on diseases of the nervous system, in the city of Chicago, testified substantially that insanity is as much a bodily disease as fever or consumption.

And where it is held, as Dr. Hammond states, that insanity is a chronic disease in which *the ideas and the acts are under the control of an irresistible power*, which proposition is not and cannot be disputed, then it certainly must be conceded that the agency which caused Crandal's death was that *irresistible power of insanity* which impelled him by *an impulse which he could not control*, to take his own life, and it seems absurd to hold that *that disease* which impelled him to take his life by a power *which he could not resist* is not the cause, either *directly* or *indirectly*, *in whole or in part*, of his death. And we cannot understand why his death was not the direct result of that disease which caused him by an irresistible power to take his own life.

If a man should be overcome by thieves, who, after robbing him, should bind and throw him in front of a moving locomotive, we submit they could not escape punishment on the ground that the locomotive was the proximate cause of his death. And, in the case at bar, plaintiff below claims that Crandal, by a power equally irresistible, viz.: the power of the disease of insanity, was *forced* to his death; and can it be held that this power was neither wholly or in *part*, neither *directly* or *indirectly*, the *cause* of Crandal's death?

Webster defines "cause" as follows: "That which "produces or effects a result; that from which any-

"thing proceeds and without which it would not "exist; that which is the occasion of an action; "that by reason of or on account of which anything is "done; power; influence; to be the occasion of." The "Imperial" gives this definition: "That which produces "an effect; that from which anything proceeds, and "without which it would not exist; the reason or motive "that urges, moves, or impels the mind to act; to be "the occasion of; to effect by agency." And applying these definitions, we respectfully submit that the disease of insanity was the cause of Crandal's death.

Indeed, in Judge Dyer's opinion at the bottom of page 12 of record, he says: "Fondness for family and friends "(is) changed to indifference, and, in short, his reason- "ing powers and self-control appear to have been pros- "trated by the fear of want and by morbid impulses and "delusions such as in this species of insanity *impel to* "*self-destruction*."

Impel to self-destruction means *force* to self-destruction. We think it will not be denied that that which *impels* or *forces* to self-destruction *causes* self-destruction, and yet the learned judge holds that whilst this disease of insanity *impels* to self-destruction, *forces* the patient to self-destruction, yet it was not in any manner the *cause* of self-destruction, either directly or indirectly, in whole or in part.

Here was a force so strong and powerful that Crandal could not resist. An absolutely, overpowering, irresistible force, and yet the learned judge, whilst admitting this to be true, says that this force was not to any extent the cause of his death.

It seems unnecessary to do more than call the court's attention to this part of the learned judge's opinion to show the fallacy of his entire reasoning.

The fourth error assigned is that

THE COURT ERRED IN FINDING THAT EDWARD M. CRANDAL'S DEATH WAS CAUSED BY ACCIDENTAL INJURIES ALONE, AND TO THE EXCLUSION OF EVERY OTHER CAUSE.

There has never been a case exactly like the case at bar before the courts of this country, but there have been a great many cases decided by the higher courts of this country under life insurance policies which contained a provision that the company should not be liable in case of suicide, and of late years it has been almost invariably held by the higher courts, in cases against life insurance companies, where it has been shown that the man was insane at the time he took his life, that his death was caused by the disease of insanity, and that it was not suicide. In other words, that death by suicide, whilst insane, is death by disease.

In his opinion in this case the learned judge, while substantially admitting that insanity is a disease, holds that the disease was not the proximate cause of the death, thus, as we claim, reversing all the decisions that have been made by the higher courts in this country, which hold that in cases of suicide whilst insane, the disease of insanity is the *proximate cause* of death, and it is held that the reason life insurance companies are liable in case of an insane suicide is that they insure against death by disease, and that death by an insane suicide *is death by disease.*

We quote the following authorities as showing that

the court erred in his interpretation of the law, and that disease, in a case like that at bar, is the direct and proximate cause of death.

In the case of *Life Ins. Co.* v. *Terry*, 15 Wallace, 580, also reported in Bigelow's Life and Accident Ins. Reports, Vol. 3, page 819, Justice HUNT, in delivering the opinion of this court, in the case of an insane suicide, says:

"The excessive action of the brain, whereby the "faculties become exhausted, and want of proper action "whereby the functions become impaired and dimin-"ished; the visions and delusions and mania which "accompany irritability, or the weakness which results "from an excess of vital functions, indigestion and "sleeplessness, are all the results of a disturbance of "the physical system. The intellect and the intelli-"gence of man are manifested through the organs of "the brain, and from this, consciousness, will, memory "and judgment, volition and passion—the functions of "the mind—do proceed. Without the brain these can-"not exist. With an injured or disordered brain their "powers are impaired or diminished. * * * Delirium, "fever, tearing away bandages for preserving the life "of the patient, and the taking of poison in a case like "that before us, *are all the results of bodily disease.*"

Now, if in the Terry case the taking of poison was the result of bodily disease, and his death which resulted was the *result of bodily disease*, viz.: insanity, why in the Crandal case is not the taking of his own life by hanging the result of bodily disease, insanity? It seems to us that these cases are in principle identical. In one case the man committed suicide by taking poison when

insane; in the other the man committed suicide by hanging when insane, and if in the first instance the death was the result of bodily disease, how can it be held in the second that death is *not* the result of bodily disease? And has not this court held substantially in the Terry case that disease in a case like that at bar is the proximate and direct cause of the death?

In the case of *Fowler* v. *Germania Life Ins. Co.*, decided in the Superior court of Baltimore, reported in Bliss on Life Ins., 2d edition, page 415, the case of an insane suicide, the court held, where there was a provision in the life insurance policy against death by suicide, that insanity is a disease, and there was no reason why the company should be exempted from liability in case of death by that disease any more than any other, and that the exception in the policy applied only to cases in which there was an intentional killing of himself when sane. In other words, the court in that case held that death was the result of disease, that disease was the *direct and proximate* cause of death and that the suicide was simply the result of that disease.

In the case of *Gay* v. *Union Mut. L. Ins. Co.*, 9 Blatchford's Circ. Court Reports, page 146, Judge Woodruff charged the jury substantially that the plaintiff's theory of his own case was that the self-killing was not suicide within the meaning of that term as employed in the policy, but, on the contrary, that Gay, when he discharged the pistol, was insane by reason of disease, and in that case the jury found substantially that the disease of insanity was the cause of Gay's death, and not suicide.

In the case of *Breasted* v. *Farmers' Loan & Trust Co.*,

8 N. Y. Court of Appeals, p. 229, also reported in Bigelow's Life and Accident Ins. Reports, Vol. 1, page 348, the case of an insane suicide, the court held that:

"It must occur to every prudent man seeking to make "provision for his family by an insurance on his life, "that insanity is one of the diseases which may termin- "ate his being.

"It is suggested that defendant did not insure the "continuance of the intestate's reason; nor did they "insure him against the smallpox or the scarlet fever, "but had he died of either of those diseases, no doubt "the defendant would be liable. What difference can "it make to the insured whether his life is terminated "by the ordinary course of disease in his bed, or "whether, in a fit of delirium, he ends it himself? In "each case the death is occasioned by means within the "meaning of the policy, viz: disease."

In the case of *Conn. Mut. L. Ins. Co.* v. *Groom*, 86 Pa. State, 97, which is a case of an insane suicide, Justice WOODWARD, in delivering the opinion of the court, says:

"Self-destruction, under an insane impulse so strong "as to be beyond the restraint of the will, is a result "*produced by disease*, for which the victim of it is no "more morally responsible than he would be for any "other of the maladies from which men die."

Certainly, then, Crandal's death by self-destruction, under an insane impulse, was a result produced by disease. We quote further from the same opinion:

"Suicide, when it manifests itself in that form of "melancholia which creates a prevailing propensity for "suicide, consists in the unfounded and morbid fancies

"of the sufferer regarding his means of subsistence in "life, and a distorted conception of his relations to his "family and society, or of his rights and duties, or of "danger threatening his person, property or life. * "* * When the disease attains the stage at "which the mental power to judge of the moral nature "of the act is entirely gone, self-destruction does not "become suicide in the sense of self-murder. * "* * The rule, as stated by WILLARD, J., in "proceedings against the Farmers' Loan & Trust Co., "is a safe and just one, viz: 'It must occur to every "prudent man, seeking to make provision for his family "by an insurance on his life, that insanity is one of the "diseases which may terminate his being, etc.'"

Now, in his case, also, it was held that the man's death was caused by the disease of insanity from which he was suffering, which was the direct and proximate cause of his death; and that therefore the life insurance company was liable, they having insured him against death by disease; and upon exactly the same reasoning Crandal's death was the result of disease, the proximate, direct result of disease, and the defendant in this case is not liable.

In the case of *Nimick* v. *Mutual Benefit L. Ins. Co.*, decided in the United States Circuit Court for the Western district of Pennsylvania, and reported in 1 Bigelow's Life and Accident Insurance Reports, 692, it is held that insanity is a disease, and in cases like this the court say:

"The effect of the disease is often to give undue "prominence to surrounding circumstances and events, "and, by exaggerating their immediate effects or future "consequences, to furnish incitement to acts of violence "and folly."

In the case of *Estabrook* v. *Union Mut. L. Ins. Co.*, 54 Me., 224, also reported in Bigelow's Life & Accident Insurance Reports, Vol. 1, page 139, the court holds as follows:

" When death is the result of insanity *it is equally the* " *result of disease,,* for which the insane is in no respect " responsible. It is a well settled physiological fact that " disturbed intelligence has the same relation to the " brain that distorted respiration has to the lungs and " pleura. *Death then by an insane suicide is as much death* " *by disease as if it were death by fever or consumption.*

" Death by accident or mistake, if by the party's own " hand, is not within the condition. Death by disease " is provided for by the policy. *Death the result of in-* " *sanity is death by disease.* The insane suicide no more " dies by his own hand than death by a mistake or acci- " dent. If the act be not the act of a reasonable being, " but is the result of any delusion or perversion, whether " physical, intellectual or moral, it is not the act of the " man."

Does not this decision fully cover the case at bar? In the Estabrook case the facts were, that the plaintiff effected a life insurance upon his son, Joseph H. Estabrook, Jr., who, in a fit of insanity, on the 30th day of July, 1864, committed suicide. In the life insurance policy there was an express condition that in case the said Joseph H. Estabrook, Jr., shall die by his own hand the policy shall be void. He committed suicide and the court held that his death was brought about by the disease of insanity, that that disease was the proximate cause of his death; that it was the direct cause of his death; that it was not in part the cause of his death, or indirectly the cause, but that it was wholly and di-

rectly the cause of his death, and it was the agency to which his death should be solely attributed.

Now, if in the Estabrook case the disease was the proximate, direct cause of death, is it not true that in the Crandal case the disease of insanity is the direct and proximate cause of Crandal's death? The cases are exactly similar. The courts have held the life insurance companies liable, because where death is the result of insanity it is equally the result of disease, and that death by an insane suicide is as much death by disease as if it were death by fever or consumption, and that death the result of insanity is death by disease.

In the case of *St. Louis Mut. L. Ins. Co.* v. *Graves*, reported in 6 Bush., p. 268, also reported in Bigelow's Life & Accident Reports, Vol. 1, page 736, the facts shown were, that Graves held a life insurance policy for $5,000 in the St. Louis Mutual Life Insurance Company, and that he killed himself and his widow brought suit on the policy and averred that the fatal shot was the offshoot of a momentary paroxysm of moral insanity, and in that case ROBERTSON, J., in his opinion says that:

" Mental insanity is a disease and that policy insures
" against death by disease of any sort which ordinary
" prudence could not avoid. *Death by insanity is death*
" *by disease, and is so considered in medical jurisprudence.*
" Why except from the insurance death by insanity?
" Did not the parties contemplate death by any disease
" not avoidable by prudence and proper conduct? The
" underwriters took all such risk, and no other, etc."

And in that opinion it is held all the way through that insanity is the actual cause of death and not suicide. In this same case of the *St. Louis Mut. L. Ins.*

Co. v. *Graves*, there is an exceedingly well written and well reasoned opinion by Williams, Chief Justice, which for want of space we cannot quote in full, but which we would gladly submit to the thoughtful consideration of this court.

The sixth error assigned is:

THE COURT ERRED IN FINDING THAT THE DEATH OF EDWARD M. CRANDALL RESULTED FROM BODILY INJURIES EFFECTED THROUGH EXTERNAL, ACCIDENTAL AND VIOLENT MEANS WITHIN THE TRUE INTENT AND MEANING OF THE POLICY IN SUIT, AND WAS NOT CAUSED WHOLLY OR IN PART, EITHER DIRECTLY OR INDIRECTLY, BY BODILY INFIRMITIES OR DISEASE.

In his opinion, on page 16 of record, the learned judge who tried this case says:

" The policy further recites that it is issued in consid-
" eration of the warranties made in the application for
" insurance and of the premium paid, and in the appli-
" cation signed by the assured he makes certain state-
" ments of fact usual in such cases, the last of which,
" No. 15, is as follows: ' I am aware that this insurance
" will not extend to any bodily injury happening di-
" rectly or indirectly in consequence of disease, nor to
" death or disability caused wholly or in part by bodily
" infirmities or by disease, nor to any case except when
" the accidental injury shall be the proximate and sole
" cause of disability or death.'

" This is not," the court says, " a warranty of any
" fact. It is, in effect, merely an admission of knowl-
" edge on the part of the insured of such limitations of
" liability as may be declared in the policy."

We insist that this application became and was a part of this contract of insurance. It was signed by Edward M. Crandal. It was the basis or agreement upon which this contract of insurance was entered into. When Edward M. Crandal signed that application he agreed with this company that it would not be liable in case his death should happen, either directly or indirectly in consequence of disease, or if caused wholly or in part by bodily infirmities or by disease. Whilst it is not contended that this is a warranty of any fact, still it is insisted that it is a part of this contract and an agreement which is binding upon Edward M. Crandal in his lifetime and upon his beneficiaries after his death.

"When the policy refers to papers *dehors* the policy "and makes them in terms the basis of future action "in every respect or a guide as to what is to be "done or may be done, they are to be treated as a part "of the contract." Wood on Fire Ins., 2nd edition, Vol. 1, p. 349, and cases there cited. But, ignoring all of the authorities which have heretofore been cited, which hold that in cases of this kind the disease of insanity is the direct and proximate cause of death, the court, in his opinion, claims that the hanging, and not the disease, was the proximate cause of death. Notwithstanding the fact, which is admitted in this case all the way through by the plaintiff below, and which is admitted by the court, in order to take this out of the case of suicide, that it was the disease of insanity which impelled Crandal by an irresistible impulse to take his own life, still the court holds that insanity, which was the sole and moving cause, was not the proximate cause, the direct cause, of Crandal's

death. It is admitted that had it not been for the disease of insanity Crandal would not have committed suicide. It is insisted that insanity impelled him to take his life, and yet it is held that insanity is not the cause of his death, either directly or indirectly, in whole or in part. We insist that the learned judge's opinion in this case is not sustained either by the law or by the authorities which he cites in support thereof.

In the case, cited by the court, of

Ins. Co. v. *Tweed*, 7 Wallace, 44,

the facts were that suit was brought upon a fire insurance policy, which contained the condition that the company should not be liable for any loss occasioned by the explosion of a steam boiler, or explosions arising from any other cause unless specially specified in the policy. Although fire may be the proximate cause of the loss that is claimed, the company is not liable when it appears that the fire was directly and wholly occasioned by an explosion. During the time covered by the policy an explosion took place in the warehouse situated directly across the street from the one insured which threw down the walls in the warehouse insured, scattered combustible material in the street, and resulted in a conflagration which destroyed the warehouse and the cotton insured in it, which were insured under this policy. This court held that the only question to be decided in the case was whether the fire which destroyed plaintiff's cotton happened or took place by means of the explosion. That the explosion was in some sense the cause of the fire was not denied, but it was claimed that its relation was too remote to bring the case within the exception of the policy. It was claimed that the fire was not communicated directly

from the warehouse in which the explosion occurred; that it did not come from the explosion, but that it did come from the building (the Eagle Mill) which was fired by the warehouse in which the explosion occurred.

In that case, therefore, the question was presented to this court as to proximate cause, and this court went back to the agency that brought about the result. In other words, to that cause which led to this disaster and which was the original cause, viz: the explosion, and striking out from its consideration the intermediate building that burned, the court holds that although after the explosion, fire might have been communicated to an adjoining building and from that might have been communicated to the building insured, still the explosion was the proximate cause of the loss, and that this was the cause of the fire within the meaning of the policy. The learned judge's quotation from this case we claim is mere dicta, and is not supported by the opinion and the decision of the case itself.

In the case of

Ins. Co. v. *Transportation Co.*, 12 Wallace, 199,

cited by the learned judge as sustaining his opinion in this case, he quotes from the opinion of Mr. Justice STRONG as follows:

"There is, undoubtedly, difficulty in many cases at-
"tending the application of the maxim, *proxima causa*
"*non remota spectatur*, but none when the causes succeed
"each other in order of time. In such cases the rule is
"plain. When one of several successive causes is suffi-
"cient to produce the effect, for example, to cause a

"loss, the law will not require an antecedent cause of "that cause, or the *causa causans.* In such a case there "is no doubt which cause is the proximate one, within "the meaning of the maxim; but when there is no or- "der of succession in time, when there are two concur- "rent causes of the loss, the predominating efficient "one must be regarded as proximate when the damage "done by each can be distinguished."

This is the end of the learned judge's quotation, but in the case cited, his Honor, Mr. Justice STRONG, continues as follows:

"*And certainly that cause which set the other in motion "and gave it its efficiency for harm at the time of the dis- "aster, must be ranked as predominant.*"

We submit that we are willing to take judgment according to his Honor, Mr. Justice STRONG'S opinion in this case, because it cannot be denied that: "*That "cause which set the other in motion, and gave to it its "efficiency for harm at the time of the disaster*" in the Crandal case was the disease of insanity. It is claimed by plaintiff below that this irresistible impulse created by that disease was the *cause* which set in motion the taking of his life, and gave to that its efficiency for harm at the time of the disaster. and that, it is held by this court, must rank as the predominant cause. The case cited is one in which the judgment of this court is directly opposed to the opinion of the learned judge trying this case, as will be seen by a reference to the opinion itself. It was the disease of insanity in Crandal's case which caused him to take his life, that set all the other means and agencies in motion which produced his death, and gave to them their efficiency for

harm, and this must be ranked as the predominant cause of death.

In the case of *Windspear* v. *Ins. Co.*, 6 Reports (Q. B. Div.), 42, referred to in the opinion of the court below, the assured while standing in a shallow pool of water fell down in a fit and was drowned. The policy provided that the company should not be liable for any injury arising from natural disease or weakness or exhaustion consequent upon disease. The court held that the death was not caused by any natural disease, but by the accident of drowning, and the opinion simply means that the accident consisted in his being at that particular place at the precise time when the weakness consequent upon the fit or the fainting overcame him. In that case there was no resistless force, nor did the man come to his death by suicide or by self-inflicted injuries.

Had the man fallen upon the floor of his apartment or on the street his death would not have resulted, but the accident was occasioned by the time and place and the surroundings. In the case at bar Crandal's death was *caused by disease* and was not succeeded by any other *cause*. It remained a continuous, progressive, impelling force, and was simultaneous and co-existent with the act of self-destruction, so that hanging was only the *means* not the cause of death. Had the impulse, the irresistible power ceased, the act would not have been committed, and therefore is not insanity (disease) the cause, not only proximate, but co-existent with the act?

Suppose instead of hanging himself Crandal had starved himself, would that have been an accident? The

cause of death would have been the same in either case. The *means* would have been different, but the cause would have been the same, and in either case the cause which set the other in motion and gave to it its efficiency for harm at the time of death would be the disease of insanity.

In the case of *Reynolds* v. *The Accidental Ins. Co.*, cited in the court's opinion, the learned judge admits it has only a general application to the question under consideration in the case at bar, because the proviso in the policy contains no such condition as we have here in relation to disease as a cause in whole or in part of death.

This question of proximate cause has frequently been before this court and other courts of this country, and it seems that its application must depend almost wholly upon the particular facts in each case.

In the case of *Brady* v. *The North-western Ins. Co.*, 11 Mich. Reports, 445, MARTIN, chief justice, in writing the opinion of the court, says: "Much is said by judges "of the proximate and remote causes of the loss, and "the distinction was very elaborately discussed by "counsel in the present case, but after careful con- "sideration I must confess that to my mind the word "'proximate' is unfortunately used and serves often to "mislead the inquirer and produce misapprehension of "the real rule of law. That which is the *actual* cause "of the loss, whether operating directly *or by putting* "*intervening agencies* (the operation of which could not "be reasonably avoided) *in motion, by which the loss is* "*produced, is the cause to which such loss should be attri-* "*buted.* If, in the effort to extinguish fire, property is "damaged or destroyed by water, the water may be

" said to be the proximate cause of the injury or de-
" struction, yet, in no just sense can it be said to be the
" actual cause. That was the fire, etc."

Now, applying this rule, that that which is the actual cause of the loss, whether operating directly or by *putting intervening agencies in motion* by which the loss is produced, is the cause to which such loss should be attributed, is not Crandal's death the result of insanity? Did that not only operate directly, but did it not put the intervening agencies in motion by which his death was produced? Did it not impel him to self-destruction? Did it not force him by an irresistible impulse to take his own life?

The case of *McCarthy* v. *Trav. Ins. Co.*, reported in 8 Bissell, 362, was one which was tried before the learned judge who heard this case in the court below, and we claim that in the case at bar, the learned judge has overruled himself, and all the propositions which he announced in the McCarthy case. That, also, was a suit brought upon an accident insurance policy, which was almost an exact copy of the policy in this case and provided that the insurance should not extend to any death caused wholly or in part by bodily infirmities or by disease.

The facts were, that the deceased, while exercising with Indian clubs, ruptured a blood-vessel in his lungs, which produced inflammation, the formation of abscesses and the accumulation of injurious substances in the lungs, which diseases resulted in death. Upon these facts being shown, the learned judge who heard this case instructed the jury in part as follows:

" I have stated to you generally the definition of

" proximate cause, but it must be remembered that a " cause, whether proximate or remote, *does not depend* " *alone upon the closeness in the order of time in which certain* " *things occurred.* In other words, the application of the " principle relating to proximate cause is not necessarily " controlled by time or distance or by the succession of " events. *An efficient, adequate cause being found must* " *be deemed the true cause,* unless some other cause not " incidental to it, *but independent of it,* is shown to have " intervened between it and the result. Now, applying " this principle to this case, I instruct you that if the " deceased sustained injury by the rupture of the blood- " vessel in his lungs and that necessarily produced in- " flammation and that necessarily produced a disordered " condition of the injured organ, which was in conse- " quence followed by the formation of abscesses and the " accumulation of injurious substances or matters in the " lungs, and so there resulted a diseased state of the " lungs, whereby they could no longer perform their " functions, and in consequence the insured died, that " is, if all these results followed the injury as its neces- " sary consequence *and would not have taken place if it* " *had not been for the injury, then I think the injury could* " *be said to be the proximate cause of death.*"

We are willing to be judged by the law as announced by his Honor, Judge Dyer, in this instruction. *If the result of Crandal's death would not have taken place had it not been for the disease of insanity,* then according to the law as announced in this instruction, the disease of insanity would be the proximate cause of death, that is, the actual cause of death.

In the McCarthy case the accident produced a disease which produced death, and under the instructions of the

court the jury found that the accident was the proximate or actual cause of death. In the Crandal case it is admitted that the disease produced the accident (if it could be called an accident), which produced the death, and it is held by the same learned judge that the disease is not the cause of death.

According to the judge's instruction in the McCarthy case, if Crandal's death would not have taken place, if it had not been for the insanity, then insanity would be the proximate cause of death, and even the plaintiff's position is that insanity forced him to take his own life.

In the case of *Peters* v. *Ins. Co.*, 14 Peters, 99, the question of proximate or actual cause was discussed by this court.

This was a suit on a policy of insurance whereby the defendants insured plaintiff in the sum of $8,000 on the ship Paragon. While proceeding down the Elbe with a pilot on board, the Paragon came in contact with a galiot and sunk her, which obliged the Paragon to go into a port, subject to the jurisdiction of Hamburg, for repairs. While lying there the captain of the galiot libeled the Paragon, alleging that the loss of his vessel was caused by the carelessness of those on board the Paragon. The result of the trial was that the Paragon was obliged to pay for her own repairs and about $2,600 of the damage to the galiot. It was claimed for the insurance company that it should not be required to repay the Paragon this $2,600 for damage done the galiot, and a part of Mr. Justice STORY's opinion in this case is as follows:

"The argument is, that in the law of insurance which "covers the present contract, it is a settled rule that

"underwriters are liable only for losses arising from the "proximate cause of the loss, and not for losses arising "from a remote cause not immediately connected with "the peril. *Causa proxima non remota spectatur.* The "rule is correct when it is understood to apply in its "true sense, and as such it has been repeatedly recog- "nized in this court, but the question in all cases of this "sort is, what in the just sense is the proximate cause "of the loss.

"The argument in the present case on the part of the "defendant is, that the law of Hamburg is the immedi- "ate or proximate cause of the loss now claimed, and "the collision is but the remote cause. But, surely, this "is an over-refinement and savors more of metaphysical "than legal reasoning. * * * In a just view of the "matter the collision was the sole proximate cause of "the loss. * * * The contribution was a consequence "of the collision and not a cause. * * * If there be "any commercial contract which, more than any other, "requires the application of sound common sense and "practical reasoning in the exposition of it, and the "uniformity of the application of rules to it, it is cer- "tainly a policy of insurance; for it deals with the "business interests of common men, who are unused to "abstractions and refined distinctions. Take the case "of a jettison at sea to avoid a peril.

"It is a voluntary sacrifice and may be caused by the "perils of the sea, but it is ascertained long afterwards, "and that ascertainment, whether made by a court of "justice, or by an agreement of the parties, would, in "the sense of the maxim contended for in the argu- "ment, be the immediate cause of the contribution, and "the jettison but a remote cause, and the violence of

"the winds and waves a still more remote cause of the "jettison. Yet, all such niceties are disregarded and the "underwriters are held liable for the loss thus sustained "by the jettison as general average. * * *

"These are by no means the only illustrations of the "danger of introducing such an application of the maxim "into the law of insurance as is now contended for.

"Suppose a perishable cargo is greatly damaged by the "perils of the sea, and it should in consequence thereof "long afterwards and before arrival at the port of destina- "tion, become gradually so putrescent as to require to "be thrown overboard for the safety of the crew. The "immediate cause of the loss would be the act of the "master and crew, but there is no doubt that the under- "writers would be liable for a total loss upon the gound "that the operative cause was the perils of the sea. "Suppose a vessel which is insured against fire only is "struck by lightning and takes fire, and in order to "save her from utter destruction she is scuttled and "sunk in shoal water, and she cannot afterwards be "raised, it might be said that the immediate cause of the "loss was the scuttling, but in a juridical sense it would "be attributed to the fire, and the underwriters would "be held liable therefor.

"Suppose another case, that of a vessel insured "against all perils but fire, and she is shipwrecked "by a storm on a barbarous coast and is there "burned by the natives, it might be said that the "proximate cause of the loss was the fire, and yet there "is no doubt that the underwriters would be held liable "on the policy, on the ground that the vessel had never "been delivered from the original peril of shipwreck. "Illustrations of this sort might be pursued much fur- "ther, but it seems unnecessary."

In the case of *The North American Life & Accident Ins. Co.* v. *Burroughs*, 69 Pa. State, 43, also reported in Bigelow's Life & Accident Ins. Reports, Vol. 3, page 755, it appears that whilst the insured, who held an accident insurance policy, was pitching hay the handle of the pitchfork slipped through his hands and struck him on the bowels, inflicting an injury which produced peritoneal inflammation, in consequence of which inflammation he died about a week after the injury. In this case it will be noted that the accident produced or caused a disease, which disease resulted in death, and the court very properly held that the accident was the actual cause of death.

In other words, they go back to the original cause which set those agencies in motion which produced death and without which death would not have occurred, and so in the case at bar if we go back to that disease which impelled Crandal by an irresistable impulse to take his life, we have the actual operative cause or agency which produced his death.

Without quoting further from authorities, we insist that the disease of insanity was the actual and proximate cause of Crandal's death, and in support of our view would call the court's attention to the following cases, all of which go to sustain this view of the case:

North American Ins. Co, v. *Burroughs,* 69 Penn. St., 43.
Peters v. *Ins. Co.*, 14 Peters, 99.
Ins. Co. v. *Sherwood,* 14 Howard, 351.
St. John v. *Ins. Co.*, 11 N. Y., 516.
Strong et al. v. *Ins. Co.*, 31 N. Y., 103.
Lewis et al. v. *Ins. Co.*, 10 Gray (Mass.), 159.

McCarthy v. *Trav. Ins. Co.*, 8 Bissell, 362.
Brady v. *Ins. Co.*, 11 Mich., 425.
Montoya et al. v. *Lond. Assurance Co.*, 4 Eng. Law & Eq. Reports, 500.
Montoya et al. v. *Lond. Assurance Co.*, 6 Exchequer Reports, 450.

The fifth assignment of error is that

THE COURT ERRED IN ITS FINDING THAT EDWARD M. CRANDAL WAS, AT THE TIME OF HIS DEATH, INSANE TO THAT DEGREE THAT HE WAS UNABLE TO DISTINGUISH EITHER THE MORAL OR THE PHYSICAL EFFECTS OF HIS ACT.

It has been assumed in the preceding pages of this brief that Crandal was not in any manner a free moral agent, or, in other words, that he was insane to that degree as to be unable to distinguish either the moral or the physical effects of hanging himself, and upon that assumption we claim that, under this contract, the defendant is not liable; but we now wish to call the court's attention to the *degree of his insanity*, as shown by the evidence.

The jury did not find in this case that Crandall was a raving maniac. It did not even find that he was insane to that degree that he was unable to distinguish either the moral or the physical effect of his act. What the jury did find by their verdict is shown on page 11 of the printed record, and the manner of his death and the cause of his death, according to the jury's verdict, appears in answer to the fourth and fifth interrogatories, as follows:

"4th Question. Did Edward M. Crandal hang him-

"self on the 7th day of July, 1884, and did that act re-
"sult in his death on that day?

"Answer. Yes.

"5th Question. Was Edward M. Crandall sane or
"insane at the time of the act of self-destruction?

"Answer. He was insane."

There are many degrees of insanity. Indeed, it is exceedingly difficult to draw the line at that point where sanity ends and insanity begins.

To say that a man is insane simply means, in many cases, that he is a crank, that he has idiosyncracies, that he is different from other people, or that he is depressed or despondent.

It is not claimed by any one that Crandal was a maniac. He attended to his business up to the time of his death, and his own family never even consulted a physician relative to his condition. His wife occupied the same room and the same bed with him, and no one ever claimed he was insane before his death.

The evidence shows that until a few months prior to his death Crandal had been a wealthy man; that he was a manufacturer of barbed wire, and becoming involved in litigation with Washburn & Moen, and from other causes, he lost his money, and became insolvent, on account of which he became despondent. On page 30 of record, Mrs. Crandal, in telling what occurred the day before his death, says: "He slept some during the "night. On Sunday morning he seemed a little brighter, "but nervous; dressed himself, and remarked that his "clothes were very loose. He said: 'Just see how "loose my clothes hang on me. They hang on my "back,'" etc.

On page 31 she says: "He had business troubles, and "some with the Washburn & Moen Manufacturing Com- "pany. He had suits against them, and they worried "him considerably. At the time of his death he was "not a man of means. He had met reverses in busi- "ness, and to some extent he lost his property, and it "worried him."

As to what occurred on the morning of his death, she says (page 31 of record): "I got up about five o'clock "Monday morning. He was awake at the time. I "asked him how he felt, and he said he did not feel any "better; that he had not slept any since two o'clock, "and that the bromide did not do him any good. I said "he had better take another dose, and go to bed. * * "* He took some, and I left the room."

On page 32 she says: "I think I believed him insane "since the 19th of May. I did not consult with any "physician about the matter, and I don't know that I "realized that he was insane all the time. * * * "*I don't know that I came to the conclusion that Mr. Cran-* "*dal was insane prior to his death.*"

Mrs. Crandal's testimony goes to show that her husband was depressed, or as she expresses it, that he was "very much worried" on account of financial reverses, etc., but in his conversations with her up to the very hour of his death, there is nothing to indicate that his mind was gone or that he did not understand not only what he did, but the effect of what he did. He understood the effect of the bromide. He told her what he had taken had done him no good because it failed to induce sleep. She told him if he would take another dose it might induce sleep, and he did take more for

that purpose. He told her he had not slept since two o'clock. All of which shows that his reasoning powers remained, that he took note of time and that he understood perfectly what he was doing. And Mrs. Crandal, who understood his character better than any other person says: "*I don't know that I came to the "conclusion that he was insane prior to his death.*"

In other words, his own wife did not believe him insane, and still they ask us to believe that he at that moment was insane to that degree that he did not know that hanging would kill him, or that it was wrong to commit the act, and that it was an "unexpected event which "happened by a chance"—"an event which took place "without the oversight or expectation of the person "acted upon"—"without design and out of course."

The next witness, Mr. Bradley, says on page 33:

"He would come in and sit down and talk about the "possibilities of the future. He had a daughter, he told "me, and what was she going to do? She had never "been taught to do any work and his wife was a subject "for the poor house and his son—they all seemed to "burden his mind very much indeed."

Mr. Washburn, the next witness, on page 35, says:

"The last time I saw him I concluded there was some "trouble with his mental organization—that he was se-"riously disturbed. I suppose that would be called "insanity. * * * I was one of the coroner's jury at "the inquest of Mr. Crandal. *We found his death was "the result of suicide.*" * * *

"Q. Is it the fact, Mr. Washburn, that on that Sun-"day you believed that he was insane, or that he might

" become insane? Did you actually believe that he was
" insane—what is commonly called insane?

" A. It depends upon what you call insanity. I be-
" lieved fully that the man's mental organization was
" seriously disturbed. I suppose there are different de-
" grees of insanity. If a man loses a large amount of
" money or meets with any great misfortune, it is apt
" sometimes to cause him to be considerably worried
" mentally. It affects men differently. I may say that
" Mr. Crandal's mind was seriously affected. * * *
" The subjects (of conversation) were his business
" affairs and troubles. He did not solicit aid from me.
" The burden of his talk was that he was all used up
" financially—that he had no hope—it was no use to try
" any further; he might as well give up and break
" down. He was utterly discouraged. I don't remem-
" ber that he ever talked to me about suicide, but he
" felt there was no use to try to retrieve himself."

Now does not this testimony of plaintiff's witnesses merely show that Crandal was "considerably worried" on account of financial reverses. "That he felt there " was no use to try to retrieve himself." And on account of these reverses he would rather die than live.

Does it show that Crandal was insane to that extent or degree that he had no mind, no will or reasoning powers left? Although greatly worried, did he not talk rationally in regard to his financial condition, and just as any other proud man would talk under like circumstances? These witnesses did not even suggest to any one that he was insane, or that they thought him insane. Mr. Washburne does not say he was insane. He says the burden of his talk was that he was all used

up financially—that he had no hope. It was no use to try any further. He might as well give up and break down; which all goes to show that Crandal after reasoning out the whole matter, had come to the conclusion, that he would rather die than live.

We insist that in order to make this an accident even under any consideration, the man must be so insane as to have no conception of what he was doing. Suppose a man is a raving maniac—yelling and shouting in the very frenzy of insanity, and should tear loose from his keepers, throw himself from the window, and kill himself. That would be altogether different from the case at bar. Here was Crandal going about the streets of Chicago, attending to his business daily. He understood fully the effect his failure would have upon his family. He talked and reasoned exactly as any other man who was utterly discouraged would have done under similar circumstances, and it seems absurd to say that at the time he placed that noose around his neck, that he did not know what he was about or that he did not fully understand that the result would be his own death.

Madison Fisher, on pages 36 and 37, says that Crandal wished him to sell his horses and carriages, and not to let any one know who they belonged to. He says at that time he thought Crandal was rich, and did not know to the contrary until after his death, and he says: If a man who was wealthy becomes largely involved in debt, they do, as a general thing, desire to keep the sale of their property quiet.

Curran, the next witness, says the last time he saw Crandal was in relation to some life insurance, which

he, Curran, had written for him. On page 38 he says: "The object of the conversation that I had that last " time with him, was whether he had received notice of " the extension of the thirty days time for paying the " premium, and then went off on to general conversa- " tion. He said he had received the notice, and talked " quite rationally."

* * * "He talked about his trip. I cannot tell all " his conversation. All I know is the impression he " made on me. It was simply an impression. His gen- " eral appearance impressed me as though something " was wrong—a great change. He told me he did not " know where he was coming to. He did not know " whether he would be able to keep up the policy long " or not, but he would keep it up for the next premium," etc.

Mrs. Martha Downer, who is Mrs. Crandal's sister, says that on Friday, prior to Mr. Crandal's death, she visited at his house with a lady friend, and that Mr. Crandal talked about his business, and told her she knew nothing about how he was troubled; that he wished to dispose of his horses, and everything was wrong. On page 41 of record she says:

"I did not say I thought he was crazy or sane or " insane, but I said I thought he appeared very strange, " and talked strange, and as I had never seen him " before; I had not seen him for over a year. I did not " talk to my sister about him, except to say I did not " think Mr. Crandal was well, he did not look well. He " was in a good deal of trouble about his business " affairs. * * * He said he would like to sell his " property, and that he was in deep trouble, and did not

" know what to do. If I had believed he was insane at " that time, I probably should have said so to my sister."

On page 41 this question was asked the witness: " What statement did you make to your friend after " you left Mr. Crandal, in regard to his condition?" to which question an objection was made, which objection was overruled and exception.

We submit the overruling of this objection was error.

Miss May Crandal, daughter of deceased, on page 42 of record says, her father suffered from insomnia; that on Saturday prior to his death he came into the stable where she was and grasping her by the arm said: " May, it is very hard. I don't know what is to become " of you, I don't know what is to become of us, " but you will lose all your friends when they find " out we have nothing to live on. I told him I did not " consider such people friends. He said you will see; " you don't see now, but you will see it, and you will not " be the same to your friends as you are now when you " cannot do for them and are situated as we are now." She further says, page 43: " On the 4th or 5th of July, " in the morning, he said he did not know but somebody " would come in and take everything we had. I said I " did not see how they could do that, and he said: You " don't understand, but they may. I didn't know whether " he referred to a sheriff or constable or robbers. I did " not know what he did mean. I did not know but " what he might refer to an officer coming to take things " on a debt. She says she never told her mother she " thought her father insane."

In making these extracts we have tried to quote *what Crandal said* in his conversations with these witnesses

shortly prior to his death. As we do not doubt that what he said, and the manner in which he talked in the numerous conversations with different people will best indicate the condition of his mind.

It will be noted these were all plaintiff's witnesses in the court below, and we think it fair to infer that they were especially selected amongst Mr. Crandal's very numerous acquaintances as those who would testify most strongly in Mrs. Crandal's behalf. It is true they testify that Mr. Crandal was nervous and excited in his manner; that his eyes were glassy and his countenance flushed, etc., but it will hardly be contended that if a man is insane to that degree that his mind is wholly gone; to that degree as to be unable to realize or understand that hanging will kill him or destroy his life, he will talk and converse in a perfectly rational and sensible manner; and we insist, that situated as Crandal was at that time, there is not a single witness who has testified to an irrational conversation with him.

His insolvency was no delusion. It was an absolute fact. That he was deeply involved—financially. That his horses and carriages must be sold. That he must change his mode of living and that of his family. That he thought his daughter would not be the same to her friends when she could not do for them as she had been doing. That he was worried and troubled; that he was utterly discouraged, and felt there was no use in trying to retrieve himself. All these were facts—they were true—they were not hallucinations or delusions or mere fancies, and Crandal talked exactly as thousands of other men who were perfectly sane have talked under like circumstances.

In a recent and very able work on social science, entitled: "Suicide, its History, Jurisprudence, &c., by W. "W. Westcott, M. B.," page 120, the following seems to sum up the whole question: "Without hair-splitting, "the great majority of suicides are perfectly well aware "of the nature of the act they are performing, and do "a deed *with a so far intelligent purpose of escaping from* "*a misery which seems unendurable,* or because of some "terror or shame that for the time overwhelms.

"It is *heart-breaking and brain-tearing trouble that* "*causes it* in the hope or belief that dying is sleep or "eternal oblivion."

Now, does not this describe Crandal's case? From the testimony of his family and friends can this court come to any other conclusion than this, that even although Crandal might have been troubled and worried and insane to a certain degree, yet, that he was well aware of the nature of the act he was performing, and did it with an intelligent purpose of escaping from a misery which to him seemed unendurable.

Dr. Gray, an eminent specialist, in The American Journal of Insanity, volume 34, writes in regard to the United States: "Suicide is always an unnatural act, but "in the large proportion of cases it is committed by "sane people."

Now, whilst the jury have found that Crandal was insane—which, under the decisions of this court, we understand is final, so far as that fact is concerned, still we insist that insanity, at best, is a merely relative term, and that a man may be and is, aware of the nature and result of such an act as this, even though he may have barely stepped over that imaginary line which separates

the sane from the insane. And we submit that an accident is impossible where the will or mind, *in any manner, however slight*, or *in any degree, however remote*, concurs in the act.

Crandal went deliberately at work to take his life. In tying the knots in his suspenders, and with them arranging the noose—indeed, in every step and act there is shown the design and *knowledge* not only of the methods but of the *effect* of the act of self-destruction, and, under all the facts, it seems to us absurd to say he did not know, and had no idea what the result would be.

Had the question which was submitted to the jury, instead of being—was Edward M. Crandal sane or insane at the time of the act of self-destruction—been, was Edward M. Crandall, at the time of the act of self-destruction, insane to that degree that he was unable to distinguish either the moral or the physical effects of his acts, then the answer probably would have been quite different, and we insist that the submission to the jury in the manner it was submitted is error.

We take it that no one will deny there are degrees of insanity, or that a person may be insane in a slight degree and still be accountable for his acts and aware of their nature and results. This has now become the settled doctrine of all eminent authors. Ray, in his "Medical Jurisprudence of Insanity," on page 84, gives a table showing the forms and degrees of insanity. On page 157 he says, "Mania under whatever form it may "appear, is generally preceded, except when produced "by injuries or moral shocks, by a change in the nat-"ural condition designated by writers as *the period of "incubation*."

In defining this period of incubation, he says: "Some-
"times the action of the cause is strong and rapid," etc.

"In the other cases" (and here he defines Crandal's case exactly), "thought only becomes affected gradu-
"ally and often very slowly. The patient is generally
"conscious of some disorder in his intellectual faculties;
"he is beset by new and odd notions and by unusual
"inclinations; he feels himself changing in his affec-
"tions; but at the same time he preserves a conscious-
"ness of his condition—is vexed at it and tries to
"conceal it—he continues his occupation as much as he
"can. Meantime his health continues to give way and
"he either sleeps less or loses sleep altogether. The
"appetite diminishes or disappears. *Embonpoint* de-
"creases. At the same time there is observed some-
"thing unusual and even extraordinary in the tastes of
"the patient, in his habits, his affections, his character
"and aptitude for business; if he was gay and commu-
"nicative, he becomes sad, morose and averse to socie-
"ty. * * * And it is in these circumstances that his
"conduct gives rise to a host of interpretations on the
"part of his relatives and the public."

"This *period of incubation* may last a long time," etc.

Could the learned author have described Crandal's case any more accurately had he heard the testimony of all those witnesses? and this describes merely the *period of incubation* of the disease of insanity, and we submit there is no authority which holds that during this period of incubation a man is unable to distinguish either the moral or the physical effects of his acts, but, on the contrary, "he preserves a consciousness of his "condition—continues his occupation, and thought only "becomes gradually affected."

Nearly all of Mrs. Crandal's witnesses testified that her husband suffered from sleeplessness; both she and her daughter testified that he suffered very greatly from insomnia; "some nights he would not sleep at all, "and some nights he would get an hour's sleep"; this state of affairs they say existed for some time prior to his death.

It will probably be admitted that there is no more fertile cause of suicide than insomnia. In Westcott's work entitled "Suicide," page 136, he says:

"Closely connected with mental and bodily disorders *as* "*a cause of suicide* is sleeplessness. There is, I suppose, "nothing more trying to the sensations and nothing more "exhausting to the nervous system than this symptom. "Its tendency to become habitual and to become more "and more complete are its harassing qualities. * * * "Business men especially apply to their doctors for this "ailment and their request is often answered by a little "anti-dyspeptic mixture, whereas a powerful sedative "for a few nights until rest and change can be arranged "for would be the means of preserving life."

Will the court please mark the author's words, "Closely connected with mental and bodily disorders *as* "*a* CAUSE *of suicide*," etc. Every medical and legal writer upon this subject holds that the disease of insanity is a *cause* of suicide, and Judge Dyer stands alone in holding that insanity is not the cause.

We have no doubt from the evidence in this case that had Crandal, instead of taking a teaspoonful of diluted bromide, gone to a physician and taken a sedative sufficient to have given him twelve hours' sleep on that Sunday night, he would never have come to his death

by "self-inflicted injuries." It will be noticed that the words "*self-inflicted* injuries" are in capitals in the policy, as bearing a special significance, apart from suicide, neither do they follow immediately after the term suicide, but other means of death are provided for between, thereby establishing a distinct and intentional difference between the two terms.

Under all the evidence in this case, therefore, we insist that Crandal, at the time of his self-destruction, was not insane to that degree that he was unable to distinguish either the moral or the physical effect of his act.

The court, in seeking to ascertain the "true intent "and meaning" of this contract, and in arriving at the intention of the parties, will note the difference between the premium paid on this and that which Crandal would be obliged to pay on a straight life insurance policy.

The premium which Crandal paid on this accident policy was fifty dollars per year, whilst, according to Mr. Gaylord's testimony, (Rec., 47,) he would be obliged to pay a premium of six hundred dollars per year on a straight life insurance policy for a like amount. This simply shows the scope of this contract was exceedingly limited, and that it was only intended to cover an accident in the ordinary acceptation of that term, and was not intended to cover anything which "impels "a man to self-destruction," or to death caused, forced or impelled, by disease.

We claim it as a perversion of the plain intent and meaning of this policy and of the English language to call Crandal's death an accident, and it was a meaning which was never intended or understood by either of the parties to this contract.

In the case of *Dr. Gogorza* v. *Knickerbocker Life Ins. Co.*, 65 N. Y., (20 Sickels) 237, where it was contended that a mad man's death was an accident, the court say:

"It is urged by way of argument, that if a mad man "causes his own death, it is no more than a mere acci- "dent, and that therefore a death caused by mere ac- "cident and by one in no way responsible for his acts "is in fact the same thing.

"A death by accident *within the meaning* of that term "as used in conditions of insurance *is not a death result-* "*ing from insanity*, and in that connection has no refer- "ence to the condition of the mind of the party so dying. "*It has relation to casualties of a different character* by "which life is destroyed, and the language of a contract "unless there are special reasons to the contrary, must "have a construction *according to its common and ordi-* "*nary meaning as the majority of mankind would under-* "*stand it.*".

"The best construction," says Gibson, Ch. J., in the *Schuylkill Navigation Co.* v. *Moore* (2 Whart., 491), "is "that which is made by viewing the subject of the con- "tract as the *mass of mankind would view it, for it may* "*be safely assumed that such was the aspect in which the* "*parties themselves viewed it.*

"A result thus obtained is exactly what is obtained "from the cardinal rule of construction.

"It is, therefore, not too much to say that a suicide, "the result of a partial or total aberration of mind "*would not in the judgment of a great majority of man-* "*kind be regarded as an accidental death*, and the *sugges-* "*tion, I think, results from an acuteness of intellect not* "*plain to a common understanding.*"

(The italics are ours.)

This court in 15th Wallace, 580, uses this language: "A contract must receive the construction which the "language used fairly warrants. What was the under- "standing of the parties? or rather what understand- "ing must naturally have been derived from the lan- "guage used?"

This contract provides that this company shall not be liable in case the death shall be caused either *wholly or in part* by bodily infirmities or by disease or by suicide or by self-inflicted injuries. It provides that the insured shall use diligence for his own protection and safety, and should only be liable when the injuries are effected through *external* and purely accidental means. Indeed every single line of this contract repels the construction Judge DYER has placed upon it:

"This contract has relation to casualties of an entirely "different character, and should be construed 'accord- "ing to its common and ordinary meaning, as the "majority of mankind would understand it,'" and it is only by twisting and distorting the English language from its plain and accepted meaning—a meaning wholly different from that contemplated by the parties themselves, that this policy can be held to cover a case like this. Neither the language used nor the understanding of the parties warrant such a construction.

There is no question that to fasten liability on an accident insurance company for suicidal death while insane, is to set aside both the letter and the spirit of the contract.

An accident insurance company has never knowingly assumed such a risk, and Judge Dyer's opinion, if carried out, would render death from any one of countless

other causes an accidental snuffing out of the lamp of life.

The first error assigned, is that the court erred in overruling plaintiff in error's objection to the evidence of Crandal's insanity.

This assignment, and also the second and the seventh, are perhaps covered by what has been stated under the third, for the position of the insurance company is, that if Crandal was insane to that degree that he was unable to distinguish either the moral or physical effect of his act, and that such insanity, by an irresistible power which he could not control, drove him to take his life by "self-inflicted injuries," that then under the contract the company is not liable, because: *First*, it was a death produced by "self-inflicted injuries"; and, *second*, it was a death which was caused by bodily infirmities or by disease directly or indirectly, in whole or in part, and in either case it was barred by the contract, and the evidence was inadmissible. If Crandal was not insane, it was suicide, and in no case was it an accident, nor did Crandal come to his death by "accidental injuries *alone*," wholly without the intervention of any other agencies, and we therefore respectfully submit that the judgment is erroneous and should be reversed.

For the convenience of the court, the writer attaches hereto a blank application and blank policy, which, in their written portions, are exact copies of the application signed by Mr. Crandal, and the policy issued to him, and the conditions to which we ask the court's special attention are underscored.

Respectfully submitted.

BATES, BROUGHAM & TUTTLE,
Attorneys for Plaintiff in Error.

EMERSON B. TUTTLE,
Of Counsel.

Amount, $.....

Application for Accident Insurance.

Premium, $.....

Policy Number..... Agency of.....
To be filled out by Agent.

Home Office Register..... At .....
Leave blank.

TO THE ACCIDENT INSURANCE COMPANY,
OF NORTH AMERICA.

The undersigned hereby applies for a Policy of Insurance against bodily injuries effected through external and accidental violence; said Policy to be based upon the following statement of facts, which I hereby warrant to be true.

1. My full name is 2. AGE

3. My Residence is ..... County of ..... State of .....
My Place of Business is (Street and No.)

4. My occupations are fully described as follows: — .....

5. Write policy payable in case of death by accident under provisions of the policy to .....
Whose relationship to me is that of

6. I have no other insurance in THE ACCIDENT INSURANCE CO., of North America, and no other accident insurance in any Company or Association, *except as herein stated.*

7. The class of risk under my occupation is

8. I understand, that if I meet with an accident while engaged in any occupation rated higher than that under which I hereby elect to insure, I will receive compensation *pro-rata.*

9. The amount of insurance in case of accidental death to be $

10. The amount of weekly indemnity for totally disabling injuries to be $

11. Said policy to continue in force during a period of months.

12. I have never had nor am I subject to fits, disorders of the brain, or any bodily or mental infirmity, *except as herein stated.*

13. I have not in contemplation any special journey, nor any hazardous undertaking *except as herein stated.*

14. My habits of life are correct and temperate, and I understand that the Policy will not cover any accidental injury which may happen to me either while under the influence of intoxicating drinks, or in consequence of having been under the influence thereof.

15. I am aware that this insurance will not extend to hernia, nor to any bodily injury of which there shall be no external and visible sign; nor to any bodily injury happening directly or indirectly in consequence of disease; nor to death or disability caused wholly or in part by bodily infirmities or by disease, or by the taking of poison, or by any surgical operation or medical or mechanical treatment; nor to any case except when the accidental injury shall be the proximate and sole cause of disability or death.

Dated ..... *this* ..... *day of* *188*

Signed .....

(Form 18.)

N. B.—The Policies of this Company are not forfeited by the Insured engaging in a more hazardous occupation than that for which he has paid his premium. See question 8.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 1126.

OCTOBER TERM, A. D. 1886.

THE ACCIDENT INSURANCE COMPANY OF NORTH AMERICA,
Plaintiff in Error,

vs.

LORETTA M. CRANDAL,
Defendant in Error.

Error to the Circuit Court of the United States, Northern District of Illinois.

Brief and Argument for Defendant in Error.

HOUSE, FRY & BABB,
Attorneys for Defendant in Error.

GEO. C. FRY,
Of Counsel.

CHICAGO:
HORACE O'DONOGHUE, BRIEF AND ABSTRACT PRINTER, 69-87 WASHINGTON ST.,
1886.

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Of Counsel.

NOTE.—Not having been favored with a copy of the brief and argument of the plaintiff in error, it was necessary for defendant in error to make a statement of facts and discuss questions which, possibly, have not been argued by the plaintiff in error.

The references to the record are to pages of the printed transcript of the record.

Statement of Facts.

May it please the Court:

On the twenty-third day of May, eighteen hundred and eighty-four, the plaintiff in error issued to Edward M. Crandal a policy of insurance, by which it promised to pay to the defendant in error, the wife of the insured, ten thousand dollars, within thirty days after proof that the insured had, while the policy was in force, sustained bodily injuries, through *external, accidental and violent means*, within the meaning of the policy and the conditions annexed, and that such injuries alone caused death within ninety days from the happening thereof. It was provided that the insurance should not extend to death "*which may have been caused wholly or in part by bodily infirmities, or disease,*" *or to death caused by suicide or self-inflicted injuries.*

On the seventh day of July, eighteen hundred and eighty-four, during the life of this policy, the insured, while insane, died, by hanging himself. Notice was given and proofs made of the death, as required.

Payment of the policy was refused, and suit was begun. To the declaration in assumpsit, containing two special counts, a general issue was tendered, and the defendant in error joined therein.

On the trial, after preliminary proof, nine witnesses were examined by the plaintiff below, who testified that in their opinions, giving the facts on which they were based, the insured was insane at the time of his death. No evidence was offered by the defendant below upon this point. "After instructions to the jury, to which no ex-

ceptions were made,"[1] the jury returned a special verdict, finding that the insured hanged himself and died from the effects thereof, and that he was insane at the time of such act of self-destruction,[2] leaving it to the court to determine whether on the facts found the plaintiff could recover. The court, taking the case under advisement on the second day of February, delivered its opinion[3] on the twenty-sixth day of March following, in favor of the plaintiff below. Whether there was error in this decision is the main question for discussion.

Some rulings upon questions of evidence will also be noticed.

Brief of Points.

I.

The insured came to his death by external, accidental and violent means.

Bouvier's Law Dictionary.
Webster's Dictionary.
Dictionary of the English Philological Society.
Aristotle, quoted in The Theory of Thought, by Noah K. Davis, page 80.
Encyclopedia Britannica.
Chambers' Encyclopedia.
Whately's Rhetoric, 74.
Locke's Works, Vol. 1, p. 146.
Winchell's Reconciliation of Science and Religion, 119.
Sir J. Herschel's Familiar Lectures on Scientific Subjects, Am. ed. 462.
Hopkin's Moral Science, Rev. ed. 33, 64.
Taylor's Medical Jurisprudence, 3rd ed., Vol. 2, p. 563.
Esquirol, in Malad Ment. Vol. 2, p. 842.
Marc, in De La Folie, Vol. 2, p. 71.
Pierce *v.* Travellers' Ins. Co., 34 Wis. 396.
Hill *v.* Hartford Ins. Co., 22 Hun, 189.
Bayless *v.* Travellers' Ins. Co., 14 Blatchf. 144.
Pollock *v.* U. S. Mu. Acc. Asso., 102 Pa. St. 230.
Lawrence *v.* Mu. L. Ins. Co. of N. Y., 5 Bradwell, 280, 287.
The N. W. Mu. L. Ins. Co. *v.* Hazlett, 105 Ind. 212.
Life Ins. Co. *v.* Terry, 15 Wall. 580, 582, 588, 590, 591.
Life Ins. Co. *v.* Rodel, 95 U. S. 232, 241.
Manhattan L. Ins. Co. *v.* Broughton, 109 U. S. 131.
Karow *v.* Continental Ins. Co., 57 Wis. 56.
Breasted *v.* Farmers' Loan & Trust Co., 4 Hill (N. Y.) 73, 75.

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1 Rec., p. 48.
2 Id.
3 Rec., pp. 12 to 21.

Ray's Medical Jurisprudence of Insanity, 268.
Jamieson in "Med. Gaz.," Vol. 46, p. 827.
Medico-Legal Papers, Rev. ed. of 2nd Series, p. 284.
Maudsley on Responsibility in Mental Disease.
Fisher on Insanity, 83.
Drs. Bucknill and Tuke on Psychological Medicine, 275.
Reese's Ed. of Taylor's Medical Jurisprudence, 857.
Beck's Medical Jurisprudence, 12th ed., Vol. 1, p. 789.
O'Dea on Suicide, 159 and 160.
Austin's Jurisprudence, Vol. 1, p. 376.
Amos on the Science of Jurisprudence, 81, 83.
Holland on Jurisprudence, 71, 72.
Elements of Law, by Markby, 102.
Holmes on the Common Law, 91, 93, 94, 131.
Lex Aquilia, by Dr. Grueber, p. 13.
Bowyer's Commentaries on Modern Civil Law, 193.
Smith on Law of Reparation, p. 21.
Cooley on Torts, 99.
Sourdat on Traite General de la Responsabilité ou de l'Action en Dommages—interets en de-hors des Contracts, quoted in 8 Am. L. R. 508.
Du Saulle, Berryer et Pouchet, Medicine Legale, p. 582.
Ram on Legal Judgment, 104.
The Law of Accidents, Vol. 10, p. 219, of Hours at Home.
4 American Law Review, 257.
1 Southern Law Review (N. S.) 346.
Parsons on Contracts, 5th ed., Vol. 3, p. 180.
Miller *v.* Mutual B. F. Ins. Co., 31 Iowa, 236.
Id., 34 Iowa, 222.
Ripley *v.* Pass. Assur. Co., 2 Bigelow's Cases, 758.
Breasted *v.* Farmers' Loan & Trust Co., 8 N. Y. 305.
St. L. Mu. L. Ins. Co. *v.* Graves, 6 Bush. 272, 274, 275.
Dean v. Am. Mu. L. Ins. Co., 4 Allen, 96.
Cooper *v.* Mass. Mu. L. Ins. Co., 102 Mass. 227.
Van Zandt *v.* Mu. L. Ins. Co., 55 N. Y. 169, 177.
Knickerbocker L. Ins. Co. *v.* Peters, 42 Md. 414, 421.
Eastabrook *v.* Union Mu. L. Ins. Co., 54 Me. 224, 227, 229.
Packenhauer *v.* Germania L. Ins. Co., 7 Heisk. 569.
Lewis *v.* Flint & P. M. Ry. Co., 54 Mich. 63.
Carter *v.* Towne, 103 Mass. 507.
Moore *v.* Conn. Mu. L. Ins. Co., 4 Bigelow's Cases, 138.
Covertson *v.* Conn. Mu. L. Ins. Co., 4 Bigelow's Cases, 169.
Ins. Co. *v.* Tweed, 7 Wal. 52.
Ins. Co. *v.* Transportation Co., 12 Wall. 199.
Norrington *v.* Wright, 115 U. S. 206.
Reynolds *v.* Accidental Ins. Co., 22 L. T. Rep. (N. S.) 820.
Winspear *v.* Accidental Ins. Co., 6 L. R. (Q. B. Div.) 42.
Lawrence *v.* Accidental Ins. Co., 7 R. (Q. B. Div.) 216.
Scheffer *v.* R. R. Co., 105 U. S. 249.
Trew *v.* R. R. Pass. Assur. Co., 5 H. & N. (Exch.) 211.
Fitton *v.* Accidental Death Ins. Co., 17 C. B. (N. S.) 122.
Sinclair *v.* The Maritime Pass. Assur. Co., 107 E. C. L. 476.
Erskine, J., in Barradaile v. Hunter, 5 M. & G. 346.
State *v.* Jones, 50 N. H. 398.
State *v.* Pike, 49 N. H. 407, 408, 438.
Bradley *v.* State, 31 Ind. 509.

De Gogorza v. Knickerbocker L. Ins. Co., 65 N. Y. 237.
Id,, 8 Albany Law Journal, 10.
Prov. L. Ins. Co. *v.* Martin, 32 Md. 310.
N. A. Ins. Co. *v.* Burroughs, 69 Pa. St. 43.
Mallory *v.* Travellers' Ins. Co., 47 N. Y. 52.
Schneider *v.* Prov. L. Ins. Co., 24 Wis. 28.
Scheiderer *v.* Travellers' Ins. Co., 58 Wis. 15.
ERSKINE, in King *v.* Hadfield, 27 St. Tr. 1314.
1 Burr, 153.
Argument of Attorney for Plaintiff in Barradaile *v.* Hunter, 5 M. & G. 342.
Clift *v.* Schwabe, 3 C. B. 437.
Supreme Commandery K. G. R. *v.* Ainsworth, 71 Ala. 446, 448.
Horn *v.* Anglo-Austrian U. F. L. Ins. Co., 7 Jur. (N. S.) 678.

See *Post* Argument pp. 9 to 46.

II.

The case does not come within the condition against death caused by suicide or self-inflicted injuries.

Life Ins. Co. *v.* Terry, 15 Wall. 580.
Life Ins. Co. *v.* Rodel, 95 U. S. 232.
Manhattan Life Ins. Co. *v.* Broughton, 109 U. S. 131.

See *post* Argument, p. 46.

III.

The grammatical and legal meaning of the condition against death caused "by bodily infirmities or disease," is that the policy shall not extend to death caused by bodily iufirmities or BODILY disease. Hence, admitting the death of the insured to have been caused by insanity, a mental disease, it is not, according to common acceptation, within the condition against death caused by bodily infirmity or BODILY disease.

Bardeen's Complete Rhetoric, p. cxxii, Obs. 85; also pages xxxiv and xxxv, Obs. 13 and 14.
Boyd's English Composition, sec. 7, p. 41.
Ins. Co. *v.* Dunn, 19 Wall. 224.
State *v.* Stinson, 4 Zabriske (N. J.) 9.
Buckham on Insanity in its Medico-Legal Relations, pages 69, 66.
Zell's Condensed Encyclopedia.
Chambers' Encyclopedia.
Webster's Dictionary.
Taylor's Medical Jurisprudence, Vol. 2, p. 476.
Wharton & Stille's Medical Jurisprudence, Vol. 1, sec. 110.

See *post* Argument, pp. 46 to 50.

IV.

The expression in the fifteenth clause of the application, that "I am aware that this insurance will not extend to * * death * * caused by bodily infirmities or BY disease," is sufficiently comprehensive to cover death by any disease, bodily or mental, but the expression is no part of the contract.

a.—The policy, referring only to the warranties in the application, and containing no words to make the application, or any part thereof, other than the warranties, a part of the policy, does not incorporate within itself the fifteenth clause of the application, which is not a warranty.

May on Insurance, 2d ed., pp. 183, 184, sec. 160.
Bliss on Insurance, 2d ed., p. 85.
Trench *v.* Chenango Co. Mut. Ins. Co., 7 Hill (N. Y.) 122.

b.—When a policy is issued with terms more favorable to the insured than his application, its language, wherein it differs from the application, controls, on its acceptance by the insured. This case shows an acceptance.

Myers *v.* Ins. Co., 27 Pa. St. 268.
Lawson on Presumptive Evidence, rule 70, p. 303.

See *post* Argument, pp. 50 to 53.

V.

Granting that the fifteenth clause of the application is part of the contract, or, if not, that the condition against death caused by bodily disease extends to a death caused by mental disease, yet in the case at bar the proximate cause of death was not the disease, but the immediate act of self-destruction.

Scheffer *v.* R. R. Co., 105 U. S. 249.
Reynolds *v.* Accidental Ins. Co., 22 L. T. (N. S.) 820.
Winspear *v.* Accidental Ins. Co., 6 L. R. (Q. B. Div.) 42.
Lawrence *v.* Accidental Ins. Co., 7 L. R. (Q. B. Div.) 216.
Miller *v.* Mu. B. F. Ins. Co., 31 Iowa, 236.
Lewis *v.* Flint & P. M. Ry. Co., 54 Mich. 63.
Carter *v.* Towne, 103 Mass. 507.
State *v.* Pike, 49 N. H. 407, 498, 438.
State *v.* Jones, 50 N. H. 398.
Bradley *v.* State, 31 Ind. 509.
ERSKINE, in King *v.* Hadfield, 27 St. Tr. 1314.
4 American Law Review, 251.

See *post* Argument, pp. 53 to 55.

VI.

The expression, "Wholly or in part," does not prevent the application of the doctrine of proximate cause to the condition against death "caused wholly or in part by bodily infirmities or disease."

Lawrence *v.* Accidental Ins. Co., 7 L. R. (Q. B. Div.) 216.
Bigelow's Leading Cases on Torts, 610.

See *post* Argument, pp. 55 to 56.

VII.

If there be a doubt whether the case is within the conditions of the policy, that doubt is to be resolved in favor of the defendant in error.

May on Insurance, 2d ed., sec. 175.
Wharton on Contracts, Vol. 2, sec. 677.
Eastabrook *v.* The Union Mu. F. Ins. Co., 54 Me. 227.
Phillips *v.* La. Eq. Ins. Co., 26 La. 404.
Mallory *v.* Travellers' Ins. Co., 2 Ins. L. J. 839.

See *post* Argument, pp. 56 to 58.

VIII.

Rulings admitting and excluding evidence.

I.—There is no error in the rulings.

A.—Ruling on objection, Record page 29.

Section 5, chapter 51, Statutes of Illinois.
22 Central Law Journal, 512.
McLeary *v.* Norment, 84 N. C. 235.
Hathaway *v.* Hathaway, 91 N. C. 139.
Lamb *et al. v.* Lamb *et al.*, 105 Ind. 458–9.

B.—Ruling on objection, Record page 32.

C.—Ruling on objection, Record page 37.

D.—Ruling on objection, Record page 41.

Conn. Mu. L. Ins. Co. *v.* Lathrop, 111 U. S. 624.

E.—Ruling and exception, Record page 44.

II.—If there is error, it did not prejudice the defendant.

A.—Ruling on objection, Record page 29.

B.—Ruling on objection, Record page 32.

C.—Ruling on objection, Record page 37.

D.—Ruling on objection, Record page 41.

Conn. Mu. L. Ins. Co. *v.* Lathrop, 111 U. S. 624.

E.—Ruling and exception, Record page 44.

III.—All the objections to evidence were general, without a statement of the grounds thereof; hence no questions thereon can be raised in this court.

As the authorities to this point are very numerous, and are briefly classified in the argument, we refer to the authorities there cited, to save repetition.

See *post* Argument, pp. 58 to 69.

ARGUMENT.

I.

The insured came to his death by external, accidental and violent means.

This question arises upon the facts found in the special verdict, which, so far as material, are, that the insured hanged himself, and died from the effects thereof; that at the time of such act of self-destruction he was insane.

It is everywhere agreed that an insane man "is not a "free agent, capable of intelligent *voluntary* action;"[1] "that "principle, reason and authority all concurring, show that "an insane act is not *voluntary*."[2]

As to *what constitutes* a lunatic there is much conflict in decided cases, though substantial agreement among medical authorities.

One line of cases limit the existence of insanity, to affect legal responsibility or capacity, to the overthrow of the *intellectual* faculties.[3] Another line of authorities, while admitting insanity to exist so as to operate as an absolution of legal responsibility, or a deprivation of legal capacity, in case of the destruction of the *intellectual* faculties, do not *limit* its existence to that, but extend it to any case where the *emotions* and *feelings* are "unhinged in such a degree as to subjugate the will to some morbid appetite, or ungovernable passion, and thus precipitate, against the will,

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[1] Karow *v.* The Continental Ins. Co., 57 Wis. 65.
[2] St. Louis Mu. L. Ins. Co. *v.* Graves, 6 Bush 274.
[3] Dean *v.* Am. Mu. L. Ins. Co., 4 Allen, 96. Van Zandt *v.* Am. Mu. L. Ins. Co., 55 N. Y. 169. Cooper *v.* Mass. Mu. L. Ins. Co., 102 Mass. 227. And other cases.

insane, but *conscious* wrong."[1] As this court has said: "Persons of most decided insanity often exhibit consistency of purpose, coolness and even great ingenuity in the pursuit of some insane object to which they are impelled."[2] The doctrine of this court accords with the almost unanimous weight of medico-legal opinion.[3] Such, also, is the law of the principal continental countries.[4]

The plaintiff in error having omitted from his bill of exceptions the instructions, under which the jury found that the insured was insane, there is an uncertainty as to whether the directions under which the verdict was rendered were in accordance with the one or the other of the lines of authority delineated above, upon what constitutes insanity. Such being the case, and since "the bill of exceptions * * * is to be esteemed as a pleading of the party alleging the exception, and if liable to the charge of ambiguity, uncertainty, or omission, it ought, like any other pleading, to be construed most strongly against the party who prepared it,"[5] and since on error "the decision must be sustained * * * * * * * * unless this court can say that a state of case could not have risen to justify it,"[6]

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1 St. Louis M. L. Ins. Co. *v.* Graves, 6 Bush. 274.
Life Ins. Co. *v.* Terry, 15 Wall. 580.
Life Ins. Co. *v.* Rodel, 95 U. S. 232.
Life Ins. Co. *v.* Broughton, 109 U. S. 121.
Knickerbocker L. Ins. Co. *v.* Peters, 42 Md. 414.
Eastabrook *v.* Union M. L. Ins. Co., 54 Me. 224.
Packenhauer *v.* Germania L. Ins. Co., 7 Heisk, 567, and other cases.
2 Life Ins. Co. *v.* Rodel, 95 U. S. 241.
3 Taylor's Medical Jurisprudence, 3d ed., Vol. 2, p. 563.
Ray's Medical Jurisprudence of Insanity, 268.
Maudsley on Responsibility in Mental Disease.
Drs. Bucknill and Tuke on Psychological Medicine, 275.
Encyclopedia Britannica, Vol. 13, p. 112.
Fisher on Insanity, 83.
Jamieson in Med. Gaz. Vol. 46, p. 287.
Esquirol in Malad Ment., Vol. 2, p. 842.
Marc, in De La Folie, Vol. 2, p. 71.
4 Encyclopedia Britannica, Vol. 13, p. 112.
5 Rogers *v.* Hall, 3 Scam. 5.
6 Casey *v.* Harvey, 14 Ill. 45.
Iglehart *v.* Pitcher, 17 Ill. 308.
Rich *v.* Hathaway, 18 Ill. 548.
Barger *v.* Hobbs, 67 Ill. 596.
Gardner *v.* Russell, 78 Ill. 292.
Magill *v.* Brown, 98 Ill. 235.
Blair *v.* Ray, 103 Ill. 615.
Bradstreet *v.* Huntington, 5 Peters, 401.
Bagnell *v.* Broderick, 13 Peters, 436.
Loring *v.* Frue, 104 U. S. 223.
Jones *v.* Buckell, 104 U. S. 554.

this court has the right—it is its duty to defendant in error, in order to sustain the judgment—to assume that the instructions given were in accordance with whichever of the lines of authority noticed above may be necessary to that end. In the absence of the instructions from the record, this court may, to sustain the judgment, assume that the jury were instructed, that to constitute insanity it would be necessary for them to find, as the learned court below, speaking of the evidence and the verdict, said they "might well find," viz, "that his *judgment*, his *volition*, his will, were *overthrown*, so that * * * the act of suicide was no more his act, in the sense of the law, than if he had been impelled by irresistible physicial power."[1]

While this court may presume that the issue of sanity was found in favor of defendant in error under instructions in accordance with either of the doctrines mentioned above, it is immaterial, in the view we take, under which the verdict was rendered; *because*, if according to the first doctrine mentioned, it would have been *sufficient;* and if pursuant to the holdings of this court, there would be the same *result*, so far as this court is concerned, as a similar finding, under instructions according to the first doctrine mentioned, would have in those courts where that doctrine prevails. *That result* would be to fix the *status* of the insured (in accordance with the rules prevailing in this court for the determination of that *status*) as a standpoint from which to determine his responsibilities and capacities; it would be to *constitute* him a lunatic *in law*, who, it is everywhere declared, "is not a free agent, capable of *intelligent*, *voluntary* action."

Such this court has, after careful consideration, determined to be the condition of one whose insanity was

[1] Rec., p. 13.

established under an instruction which has been several times reaffirmed. The language of the court in discussing that instruction was :

" The propositions embodied in the charge before us are in some respects different from each other, but in principle they are identical. They rest upon the same basis — the *moral and intellectual incapacity* of the deceased."[1] Again, on the same page: " Each of the principles put forth by the judge rests upon the same basis — that the act *was not the voluntary, intelligent act of the deceased.*"

According to the law of this court, the act of self-destruction of the insured " was not his *voluntary, intelligent* act." *The question then fully presented is, whether self-destruction by an involuntary, irrational act is a death effected by external, accidental and violent means.*

a—Death was Effected by External Means.

If the proximate cause of death was the immediate act of self-destruction, and not the disease, insanity (as it will be hereinafter attempted to establish), the means of death were *external*, for a learned author writes that:

" Human acts or actions are *internal* or *external*. In other words, they are *not* perceptible by sense, or they *are* perceptible by sense. *Internal* acts are demonstrations of the will. *External* acts are such *motions of the body* as are consequent upon determinations of the will."[2]

If, however, it is attempted to make a distinction in respect to the internality or externality of the means of death, between the act of the insured and the act of another person, it is believed that it will fully appear in the discussion hereinafter to be made upon the question of accident, that the act of an insane man is to be viewed *precisely* as though it were the act of *another person*.

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[1] Life Ins. Co. *v.* Terry, 15 Wall. 588.
[2] Austin's Jurisprudence, Vol. 1, p. 376.

b—Death was Effected by Violent Means.

In so far as it is necessary that death be caused by *violent* means, it would seem to be sufficient that the operation of water upon the lungs in drowning has been held to be a violent means of death.[1] It was even said in the first case cited, that "if a man was suffocated by the smoke of a house on fire," the death would be caused by violence. Regardless of particular holdings, the case at bar seems to be clear from the very meaning of the word. *Violent* is defined as anything "produced or effected by *force*,"[2] and "*force* is the name given to whatever produces or can produce motion."[3] Gravitation, one of the natural forces, produces motion downwards. The death of the insured having been "produced or effected by the force" of gravitation, resulting in strangulation, was certainly effected by *violent* means. It is believed that this court will adopt the conclusion of *the learned court below*, that "the means employed to produce death were *external* and *violent*."[4]

c— Death was Effected by Accidental Means.

To determine this, it will be necessary to examine the effects of insanity upon the legal personality of the insured. What is a person? The concept involves the union of three elements, viz: intelligence or reason, will, and senses. With the last only, we should have a brute. The two former, without the latter, constitute a spirit. All else but persons are things, animate or inanimate. Of this notion, it is said: "Beyond the idea of individuality, it involves that of a sentient or intelligent nature, in which it differs from a substance, or thing."[5] Again, it has been defined thus: "We must consider what person stands for; which,

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[1] Trew *v.* R. R. Pass. Assur. Co., 5 H. & N. (Exch.) 211.
Reynolds *v.* Accidental Ins. Co. 22 L. T. Rep. (N. S.) 820.

[2] Webster's Dictionary.
[3] Id.
[4] Rec. p. 13.
[5] Chamber's Encyclopedia.

I think, is a thinking, intelligent being."[1] In another place, "will, sensibility and intellect" are said to be the necessary elements of a person."[2] This distinction between persons and things holds no less in *law* than in natural science. "The capacity of being invested with rights, or made liable to duties, sufficiently indicates the notion of *moral responsibility, as inseparable from that of true legal personality.*"[3] The same author has said that "the *capacity of willing, acting*, must all enter into the idea of *moral responsibility*."[4] Hence a lunatic is not a "true legal personality." Accordingly, "the Roman law regards them" (lunatics) "as incapable of will, and *as persons absent.*"[5] For the same reason it was said, "Human beings are sometimes, for special *legal* purposes, treated exactly as *things.*"[6] It will soon appear that this author applies the word thing, instead of person, to a lunatic.

Keeping in mind this distinction between persons and things, note the difference corresponding thereto, between *acts* and *events*. These words have been defined as follows: "Acts are movements of the *will.* * * * It follows that the essential elements of an *act* are three, viz.: a capacity of willing, a direction of the will to some end, and an expression of will. * * * Hence, a merely juristic person *cannot act,* * * * *nor a lunatic.*"[7] "*Events* may be either movements of external nature, or may be acts of a human being *other* than the human being whose rights are under consideration."[8] "Determinations of the will, and such motions of the body as are consequent upon determinations of the will, are (I conceive) the only objects to which the term act can be applied with propriety. It is scarcely applicable to

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[1] Locke's Works, Vol. 1, p. 146.
[2] Hopkins' Moral Science, Rev. ed. 33.
See, also, Sir J. Herschel's Familiar Lectures on Scientific Subjects, Am. ed. 462, and Winchell's Reconciliation of Science and Religion, 119.
[3] Amos on the Science of Jurisprudence, 81.
[4] Id. 83.
[5] Bowyer's Commentaries on Modern Civil Law, 193.
In Smith on Law of Reparation, p. 21, the same point is expressed thus: "Quod per furrorem alicujus accidit, quomodo si casu aliques, *sine facto personæ* id accidisset.
[6] Amos on the Science of Jurisprudence, 81.
[7] Holland on Jurisprudence, 72.
[8] Id. 71.

the motions of the body which are involuntary."[1] "Perhaps, in strictness, the word *act* ought to be confined to those movements which immediately follow volition."[2] "An *act* is always a voluntary muscular contraction."[3] "It is a willed, and, therefore, an intended co-ordination of muscular contractions."[4] Amos on the Science of Jurisprudence, page 93, says: "Corresponding to the distinction between Person and Thing is the allied distinction between Act and Event." After defining these words substantially as above, he proceeds thus: "The word Act is in truth often used in a narrower or lower sense than this. Any muscular motion, whether preceded or not by the phenomenon of will, acquires the name of 'Acts.' Thus, the muscular movements of the sleep-walker, the vibrations of the victim of St. Vitus Dance, the frantic gestures of the delirious and the insane, are dignified with the same name as the orderly and normal movements of the healthy and rational man." Again, the same author says: "There are, in fact, many critical changes in the situation of Persons or Things,* * * which admit now of being viewed merely as *Events*, now as *Acts*. The death of one person at the hands of another is regarded as an Event so far as the testamentary dispositions of the deceased thereupon come into force, the cause of death being generally for that purpose irrelevant; but it is regarded as an Act when it is attempted by a judicial process to impute Moral Responsibility to the person bringing about the death. In the course of the trial, it may be again sought, in favor of the prisoner, *to establish his insanity*,* * * *or the presence of what is called Chance or Accident*, by way of forcing on the conclusion that, in respect to the person charged, the alleged crime can only be treated as an *Event*, and *not* an *Act*."[5]

While the writers upon jurisprudence differ upon the question whether a lunatic possesses the elements of a *legal personality*, *Amos* holding that it does not, and *Holland* that it does, *there is entire agreement among them*

[1] Austin's Jurisprudence, Vol. 1, p. 376.
[2] Elements of Law, by Markby, 102.
[3] Holmes on the Common Law, 91.
[4] Id. 131.
[5] Amos on the Science of Jurisprudence, 94.

that the muscular movements of a lunatic are not Acts, but the same as movements of external nature, or the acts of some other person: that is, Events. Hence the wisdom of the remark, when speaking of self-destruction, by an insane man that:

"That which is purely accidental or fortuitous, can no more be charged to the account of the person whose act happens to be the occasion of the accident, *than to that of any one else.*"[1]

Hence, also, the reason for the remark of Mr. Justice NELSON, when *Chief Justice* of New York, that "self-destruction by a fellow-being bereft of reason can, with no more propriety, be ascribed to his own hand *than to the deadly instrument* that may have been used for the purpose."[2] This remark was lately quoted with marked approval by this court.[3] Pursuant to the same principles, also, it has been held, that one who burns his own insured property, while insane, can recover the insurance, the same as if the property had been burned by some one else without his knowledge.[4]

It is held indisputable in philosophy and law, that a lunatic is devoid of the elements of a *responsible* being; that the movements of his body are not *acts*, but *events;* that they are the same to him as movements of external nature, or the acts of some other person.

If, then, a man come to his death by a movement of some external thing in nature, or by the act of some other person, which movement, or act, he not only did not *cause*, but had not even the *power to prevent*, is not such a death effected by accidental means? Our choice would be to pursue this question no farther; but it is due the

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[1] Lawrence *v.* Mu. L. Ins. Co. of N. Y., 5 Bradwell, 280.
[2] Breasted *v.* Farmers' Loan & Trust Co., 4 Hill, 73. 75.
[3] Manhattan L. Ins. Co. *v.* Broughton, 109 U. S. 131.
[4] Karow *v.* Continental Ins. Co., 57 Wis. 56.

court that the mass of legal definitions and discussions upon questions of accident be reviewed.

The following definitions have been given:

"Anything that happens without foresight or expectation; an unusual *event*, which proceeds from some unknown cause, or is *an unusual event of a known cause.*"[1]

By *Bouvier* it is defined as 'an *event* which, under the circumstances, is unusual and unexpected by the person to whom it happens; *the happening of an Event without the concurrence of the will of the person by whose agency it was caused.*" "Any *event* which takes place without the oversight or expectation of the person acted upon or effected by the *event.*"[2] "Any unexpected *event*, which happens as by chance, or which does not take place according to the usual course of things."[3]

"It is something which takes place without any intelligent or apparent cause; *without design and out of course.*"[4]

A French law writer defines it thus:

"Everything which follows from a cause foreign to the defendant, independent of his will, and which he neither can hinder or avoid."[5]

Such being the light to be obtained from approved definitions, the attention of the court is invited to a study

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[1] Dictionary of the English Philological Society.
Webster's Dictionary.
Schneider *v.* Prov. L. Ins. Co., 24 Wis. 28.

[2] Ripley *v.* R. R. Pass. Assur. Co., 2 Bigelow's Cas. 758.
Prov. L. Ins. Co. *v.* Martin, 32 Md. 310.

[3] N. A. Ins. Co. *v.* Burroughs, 69 Pa. St. 43.

[4] Mallory *v.* Travellers' Ins. Co., 47 N. Y. 52.

[5] Sourdat on Traité Général de la Responsabilitié ou de l'Action en Dommages intérêts en de-hors des Contracts; quoted in 8 Am. L. Rev. 508.
Aristotle has given a definition of accident which, though requiring a little closer attention to comprehend, aids, when understood, more than any of the others in elucidating it. It is as follows: "Every predicate either reciprocates with its subject, or it does not. If it reciprocates, it either expresses the whole essence of the subject or none; in the former case it is called definition; in the latter, property. If it does not, it expresses either a part of the essence or none. In the former case it must be a part of the definition; either genus or difference. In the latter case it is evidently *accidental*, for accident is that which is neither *definition*, nor *property*, nor *genus*, and yet is present with a thing."
The Theory of Thought, by Noah K. Davis, p. 80.

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The Theory of Thought, by Noah K. Davis, p. 80.

of the application of those principles in the decided cases. In a suit upon an *accident policy* the court said:[1]

"The complaint charges in respect to the *accident*, substantially, that the plaintiff fell asleep from weariness, and the motion of the cars; and when it was quite dark, 'and while he was in a *dazed and unconscious condition of mind, and not knowing or realizing what he was doing, involuntarily* arose from his seat and walked *unconsciously* to the platform of said car, and, without fault on his part, fell therefrom to the ground,' and was thereby, injured. * * * The demurrer to the complaint was sustained, presumably on the ground that it did not state a cause of action. * * * The allegation of the complaint must be taken as true on demurrer. * * * These are the strongest words that could be used to negative *self*-infliction, *design*, or *voluntary* exposure. * * * From these allegations it is evident that the plaintiff was as *irresponsible* for his actions and conduct, as a human being could be from any cause, and that is sufficient."

(The italics are the court's.) If it is *sufficient* that one be *irresponsible* for his actions, the case at bar *must* be affirmed. *It cannot be explained away from the principle of that case.*

In another suit upon an *accident policy* the court held the following language: "The insured died suddenly "from taking poison. He took it by mistake. * * * "His death, as we think, must be deemed to have "occurred through accident or through accidental means."[2] The action was defeated, however, because death was not caused by *external* means. An action similar to the last was held not maintainable for the same and the additional reason that death was caused by "medical treatment for disease," which mode of death was provided against by the policy.[3] In another action upon an *accident policy*

[1] Scheiderer *v.* The Travellers' Ins. Co., 58 Wis. 15.

[2] Hill *v.* Hartford Ins. Co., 22 Hun, 189.

[3] Bayless *v.* Travellers' Ins. Co., 14 Blatchf. 144.

it was said: "If the poison be innocently taken, and without any knowledge of the injurious effect which it was likely to produce and did produce, so far as the person taking it is concerned, the effect may be said to be accidental." It was held finally that the action could not be maintained, as the death was within a condition of the policy.[1] In a suit upon a life policy it was said, by way of *dictum*, that death caused by taking an overdose of laudanum by mistake was an accidental death.[2] In another action upon a life policy the court held the following language: "From causes over which he (the insured) had *no control*, a state of mental and physical "weakness resulted, and while in that state he took an "over-draught of whisky, without any expectation or in-"tention of destroying his life. Death was, therefore, the result of an accident."[3]

In the last five cases it appears that the *accident* arose wholly from lack of *intention*. Poison was taken while intending to take something else, or more was taken of some drug than was intended. The case at bar comes within the doctrine of those cases. While this court recognizes the scientific truth that a man may intend that to which he is irresistibly impelled, the simple intention in such case, *without the power of volition*, does not affect the legal responsibility of the person. As this court remarked, "the true test lies in the word *power*. Has the "defendant * * * the power to distinguish right from "wrong, and the *power to adhere* to the right and avoid "the wrong."[4]

However, in the absence of the instructions under which the verdict was found, it may be presumed, as shown

[1] Pollock *v.* U. S. Mu. Acc. Ass., 102 Pa. St. 230.
[2] Lawrence *v.* Mu. L. Ins. Co. of N. Y., 5 Bradwell, 280.
[3] The N. W. Mu. L. Ins. Co. *v.* Hazlett, 105 Ind. 212.
[4] Life Ins. Co. *v.* Terry, 15 Wall. 590.

above, that the jury were instructed in accordance with that line of authority which requires them, in order to declare the insured insane, to find a complete overthrow of the intellectual faculties, including the capacity of intending.

It has been held that death from sunstroke was not accidental, as it is an internal disease—an inflammation of the brain—which is caused as a fever by the operation of material forces, and proceeds internally from its inception till its consummation in death.[1] It is said that such a death is from disease—a natural cause, and not accidental. Under this decision the question arises, whether death in the case at bar was caused by disease —insanity—so that it cannot be said to be from accident. The ground of that decision, as expressed by the court, was: "We think we may safely assume, that in the term 'accident,' as so used, some violence, casualty or *vis major* is necessarily involved. We cannot think disease, produced by the action of a known cause, can be considered as accidental. Thus, disease or death engendered by exposure to heat, cold or damp, the vicissitudes of climate or atmospheric influences, cannot, we think, properly be said to be accidental. * * * In the present instance the disease called sunstroke—although the name would at first seem to imply something of external violence—is, so far as we are informed, an inflammatory disease of the brain, brought on by exposure to the too intense heat of the sun's rays. * * * We think, for the reason we have given, that his death must be considered as having arisen from a 'natural cause,' and not from 'accident.'"

The first ground of this decision is, that death resulted from an inflammation of the brain, without any *violence*. The case at bar cannot be brought within this, the principal ground of the decision, because, if in it the *proximate* cause of death was the immediate act of self-destruction

[1] Sinclair v. The Maritime Pass. Ass. Co., 107 E. C. L. 476.

(as will hereinafter be shown), *it was*, as hereinbefore shown, *violent*.

Again, it is said the death from sunstroke was not accidental, because it was a death from *natural* causes. It is submitted that the death of the insured in the case at bar was an *unnatural* death. "Self-preservation is *unquestionably the natural law*, and is the strongest instinct of all animal life."[1]

For argument, grant that in *this instance* insanity was the known proximate cause of death, yet the suicidal death was "an *unusual result* of the known cause," and consequently within a well-established limitation of the definition of accident.[2] Suicide is far more frequent among the *melancholic insane* than any other class. Even among them, *only thirty-five per cent. ever manifest suicidal tendency*.[3] Even grant that *melancholic insanity* were proved (on which no issue was formed and no evidence offered), then suicide could not be called the "*usual result*" of the disease, granting that the disease was, in *this* case, the known cause. ERSKINE, J., said: "The *consequences* of mental disease, whether produced by bodily disease, by external circumstances, or by corrupted principle, are equally *beyond the reach of any reasonable estimate*."[4]

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[1] Guernsey on Suicide Laws, 44.

[2] Schneider *v.* The Prov. L. Ins. Co., 24 Wis. 28.
Dictionary of The English Philological Society.
Webster's Dictionary.

[3] O'Dea on Suicide, its Philosophy, Causes and Prevention, 159, 160.

[4] Borradaile *v.* Hunter, 5 M. & Gr. 346.
In *Reese's Ed. of Taylor's Medical Jurisprudence*, 857, it is said: "If, as it is alleged, the act of suicide was in all cases the offspring of insanity, suicide should be frequent among the insane. Experience, however, is not in favor of this assumption. The report of the commissioners of lunacy for 1850 shows that there were then confined as lunatics, 15,079 persons; while the suicides for the year among this large number amounted to only eight. As mechanical restraint is either abolished or considerably diminished in most asylums, lunatics have now much more liberty than formerly, and yet suicides among them are comparatively *rare*."
In *Beck's Med. Juris.* (12th ed.) Vol. 1, p. 789, it is said: "We may be satisfied as to the insanity, *and yet not be able to trace its union with act*."

It has been held, where a policy contained a condition against death arising from hernia, that a recovery could be had, although the insured died from hernia, which supervened upon injuries received from a violent fall, because the fall, which was accidental, was the *controlling, proximate* cause of death.[1] In another case, where an accidental stroke was received from a pitchfork handle, upon the bowels, which produced peritonæl inflammation, in consequence of which the insured died, it was held that the accidental blow was the cause of the death, and not the supervening disease.[2] As in those cases the proximate cause of death *preceded* the disease, does it not, upon the same principle, *succeed* insanity in the case at bar? An occurrence which has a proximate cause cannot be termed accidental, for a proximate result is that which is *usual and to be expected, according to the natural course of things.* If an event has no proximate cause, no cause from which it is, in the natural course of things to be expected, it is accidental. By the defendant in error it is asserted that the insured's immediate act of self-destruction, which was accidental, was the *proximate cause* of his death, and *not the disease*—insanity; that the act of self-destruction was, even if the result in any sense, an *unusual*, and hence not *in law*, the result of insanity.

The only way the defense, that the death of the insured was caused by insanity, could have succeeded, would have been by proving it as a *fact*. The plaintiff in error did not do, or even attempt this, but rested its case wholly upon the ground that on proof of insanity suicide is, *as matter of law*, shown to be a result thereof. A valuable criterion in determining the proximate cause

[1] Fitton *v.* Accidental Death Ins. Co., 17 C. B. (N. S.) 122.

[2] N. A. L. & A. Ins. Co. *v.* Burroughs, 69 Pa. St. 30.

is to consider whether "the cause alleged produced its effect *without* another cause intervening, or was it made operative *only* through and by means of this intervening cause?"[1] Did insanity produce the death, *without* the immediate act of self-destruction intervening; or was it caused *only* through and by means of it? Death would not have resulted *but for* the immediate act of the insured. From insanity *alone* it would, it could, never have happened. Will it be said that the act of the insured, and hence his death, would not have occurred but for his insanity? If so, whether such be true or not, it is answered, that upon the same principle, it would not have occurred if God had not made man, and "there are many circumstances which have no tendency *to produce* a certain effect, *though it cannot exist without them*, and from which effect, consequently, they may be inferred as *conditions*, though *not causes*."[2] It is necessary to keep this in view. In a recent and very fully considered case, decided by Judge COOLEY, a passenger was carried past the station, and when let off, it being dark, was misinformed by the conductor, of the place where he was; but being acquainted with the vicinity, he at once discovered his true position, and started back the track, and by accident, fell into a culvert, of the existence and location of which he was aware. Upon these facts it was said: "Such wrong as the defendant had been guilty of was in no manner connected with or related to the injury, *except as it was the occasion* for bringing the plaintiff where the accident occurred."[3] Here the plaintiff would not have fallen into the culvert but for the wrong of the defendant; yet

[1] Parsons on Contracts, 5th ed. Vol. 3, p. 180.
[2] Whately's Rhetoric, p. 74.
[3] Lewis v. Flint & P. Marquette R. R. Co. 54 Mich. 63.

that wrong, *without* the slipping of the plaintiff's foot, would not have caused the injury. The wrong of the defendant was a *necessary condition*, but not the *cause* of the injury. In a leading case upon this doctrine, a boy purchased powder of a merchant, and his parents becoming aware of it, failed to take it from him, after which damage resulted from his inexperienced use of it.[1] There the injury would not have occurred if the merchant had not done wrong in selling it to the boy, though it would not have happened from that *alone*. It happened *only* through the *intervening* negligence of the parents.

In the case at bar the lunacy of the insured was a condition, not a cause of death. Certain physical acts operated under that irresponsible condition of the insured, and *caused* death. It has been said by this and other courts, by way of *dictum*, that "*there is no presumption of law that self-destruction arises from insanity.*"[2] That covers the case before us. The plaintiff in error asserts that, *as a matter of law*, death was caused by insanity. This court has passed from its *dicta* to an actual decision in accordance therewith. In *Scheffer* v. *Railroad Co.*, 105 U. S. 249, a passenger was injured in a collision of trains, and afterward became insane and committed suicide. A suit was instituted by the personal representatives of the deceased against the railroad company. The question was, whether the injury was the proximate cause of death. For the company it was sought to fasten the *proximate cause* upon the immediate *act of self-destruction*. This was

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[1] Carter v. Towne, 103 Mass. 507.

[2] Life Ins. Co. v. Terry, 15 Wal. 583.
Life Ins. Co. v. Broughton, 109 U. S. 128.
Moore v. Conn. Mu. L. Ins. Co., 4 Bigelow's Cases, 138.
Life Ins. Co. v. Rodel, 95 U. S. 240.
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resisted by the plaintiff, who attempted to establish that insanity, which resulted from such injury, was the proximate cause of death. In the argument filed by *Messrs Sanborn and Kings* on behalf of the plaintiff below, on page 5, it is said:

"*It cannot be said, in answer to the above, that the death of Scheffer was caused by a new and independent cause, namely, himself.* The reply is that he was a lunatic. Idiots, lunatics, infants of tender years, persons intoxicated to a great degree and persons acting under the impulse of sudden fright are incapable of being considered as juridical causes. * * * Suicidal mania is a well-defined disease, * * * and when death ensues there is no more reason why the company should escape liability than in the case of any other disease."

In the argument of *Mr. Linden Kent*, filed on behalf of the company on page 5, it is argued that "*The physical act of the testator* that resulted in his death was, it must be conceded, a sufficient cause, and *was*, in point of fact, *the* direct, immediate and *only cause* of death." After discussing *Milwaukee R. R. Co. v. Kellogg*, 94 U. S. 475, he continues: "Here damage, which *was* proximate, *was the mental and physical injuries. These* were the *consequences* of the *accident*, which was the proximate cause. If the 'natural sequences' of these continuing injuries, without the interruption of any force or power, of itself a sufficient cause, had been the cause of the death of the party, then the death might have been the effect of which the defendant's act was the proximate cause. But death was *not* the natural and reasonable result from these conditions; and in order that death should ensue, the intervention of some other power or force was necessary. Whether this new force or power, manifesting itself in a substantive act, the immediate result of which was death, emanated from a responsible or irresponsible agent or source, or from accident or design, is immaterial; for *the necessity* for the intervention of any act *to accomplish the result* is conclusive that there was no sufficient existing cause, *without such*, and that death did not result in the ordinary sequence of events."

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On page 6 it is argued that: "To associate physcial effects with mental conditions in a chain of causes and effects, would be in violation of the principles applicable in ascertaining liability in such cases. There would be no fixed rule for juries to determine whether the cause was proximate or remote in cases where it was proper to leave the question with the jury. If juries are permitted to take into consideration mental conditions as operating causes, then we are led into a new field of investigation. All the degrees of mental condition are legitimately considered. The motive that prompted the action, as in this case the motive that caused the suicide, was the apprehension of something worse than death. * * * It is urged, however, that the death of *Scheffer* was not caused by a new and independent cause, to-wit, himself; because, being a lunatic, he was incapable of being considered a 'juridical' cause. * * * Granting that the act of the railroad company made a 'lunatic' of *Scheffer*, what then is his legal status with respect of his being a 'juridical cause'? He comes to be subject to the laws of 'material causation' (*Wharton's Law of Neg. 140.*) In the application of the laws of material causation, death was not the result. It was not the *proximate* result. It was not what was reasonably expected to result under the circumstances. * * * The lunacy of the testator was a *condition* and not a *cause*. Certain physical acts operated under the condition; the result was death. Now, if one party produces wrongfully a *condition* of things upon which either an intelligent or material agency operates, resulting in damage, the party who produces the condition which makes the damage possible is not liable therefor. Confusion frequently arises from the misuse of terms."

After this very full discussion of *the precise question* involved in the case at bar, this court delivered its opinion, in which, after reviewing *Ins. Co.* v. *Tweed*, 7 *Wal. 44*, which, it remarked, "went to the *verge* of sound doctrine," and *Milwaukee & St. Paul R. R. Co.* v. *Kellogg*, *94 U. S., 469*, it said: "Bringing the case before us to the test of these principles, *it presents no difficulty*.

The proximate cause of the death of Scheffer was his own act of self-destruction. It was within the rule of both these cases, a new cause, and a sufficient cause of death." If that does not settle this question, it is difficult to conceive of a point being established at the common law. Would a lawyer *dare* to advise his client in direct opposition to such a determination? If not, will this court, after advice has been given in accordance therewith, overturn it? If so, what would be the law for the next case? *This court only could tell.* This decision, however, is in entire accord with the previous announcements of this court. In one case it declared that " one of the most valuable of the *criteria* furnished by these authorities is to ascertain whether any *new cause* has intervened between the fact accomplished and the alleged cause."[1] In the case under discussion, of the act of self-destruction it was said, " *it* was, within the rule in both these cases, *a new cause.*" In the prior case the court, continuing, announced that " if a new force or power has intervened, of itself *sufficient* to stand as a cause of the misfortune, the other must be considered as too remote." In the case under discussion, again, the court said of the act of suicide, that it was not only a *new cause*, but " a *sufficient* cause." In another case this court holds the following language: " There is undoubtedly difficulty in many cases attending the application of the maxim '*Proxima causa non remota spectatur*,' but none where the causes succeed each other in the order of time. In such cases the rule is plain, when one of several successive causes is *sufficient* to produce the effect, the law will never regard an antecedent cause, or the *causa causans*. In such a case there is no doubt which cause is the proxi-

[1] Ins. Co. *v.* Tweed, 7 Wal. 52.

mate one within the meaning of the maxim."[1] The *very language* relied on herein, from the case of *Scheffer* v. *R. R. Co.*, is quoted with approval by Mr. Justice COOLEY, in a recent and exhaustive discussion of this doctrine [2]

It was lately declared by this court that "a diversity in the law as administered on the two sides of the Atlantic * * * is greatly to be deprecated."[3] It will certainly be interesting, then, to know that this question has been raised three times in England; that each case was discussed with spirit and force, and that in each a conclusion has been reached identical with that in *Scheffer* v. *R. R. Co.*, *supra*.

In the first case[4], Thomas Humphrey procured from the defendant a policy of *accident* insurance, insuring him against "bodily injury from any accident or violence." During the continuance of the policy the insured went bathing, and while in a pool about one foot deep became suddenly insensible, from some unexplained internal cause, and fell face downwards into the water. A few minutes later he was found dead, with his face under water, and circumstances showed that death occurred after he fell into the water. *Bosanquet*, for the defendant, argued that: "If a man is *pushed* into the water, or *forcibly* held down in it, his death then results from *violence*, within the meaning of the policy. If a man *accidently* falls into water and is drowned, his death results from accident; but if a man falls down in a *fit* in a shallow pool and is drowned, his death is the result *not* of an *accident*, or of *violence*, but of the *fit*, even though the immediate cause of death be, as here, suffocation by drowning."

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[1] Ins. Co. *v.* Transportation Co., 12 Wal. 199.

[2] Lewis *v.* F. & P. M. Ry. Co., 54 Mich. 63.

[3] Norrington *v.* Wright, 115 U. S. 306.

[4] Reynolds *v.* Accidental Ins. Co., 22 L. T. (N. S.) 820.

WILLES, J., delivering the opinion of the court, said: "In this case the *death resulted from the action of the water on the lungs*, and from the consequent interference with respiration. I think that *the fact of the deceased falling in the water from sudden insensibility was an accident*, and consequently that our judgment must be for the plaintiff."

In the next two cases conditions were inserted in the policies: in the one, against death caused by or arising from *disease*, or weakness consequent thereon; and in the other, a like condition against death from *fits*. It is already apparent that such conditions are useless in an *accident* policy, as it is necessary that death be not caused by *disease* to be an *accident*, and hence, to come within the terms of the policy. Accordingly, in the notice to be taken of these cases, neither those conditions, nor the remarks of counsel or court thereon, will be referred to, as the question is the same under an *accident policy*, without, as it is with the condition. The discussion of the *provisos* will be noticed subsequently, in connection with a similar one in the policy in the case at bar.

In the second of the English cases[1] William Winspear effected with the defendant company an insurance against *accidental* injury While the policy was in effect the insured, while fording a stream, was seized by an epileptic fit, and while in such fit fell into the water and drowned. *Cohen*, *Q. C.*, and *Bruce*, for the defendants, argued that: "The insurance *is not against death, like an ordinary life policy*, but is an insurance *only* against *accidental* injury, and therefore it is the injury which the insured received which is the thing to be looked to." Lord COLERIDGE, C. J., said: "Here he died by drowning." Counsel continuing, replied: "*But there would have been no drowning had the insured not had an epileptic fit.* It was

[1] Winspear v. Accidental Ins. Co., 6 L. R. (Q. B. Div.) 42.

the *fit* which *caused* the drowning; for, even after the insured had fallen into the stream *he could have got his head out of the water but for the fit, as the stream was shallow and could be forded.* The death, therefore, was from an injury *caused by the fit.* * * * The case of *Sinclair* v. *Maritime Pass. Ass. Co.* shows that death from a sunstroke is from a *natural cause*, and *not from an accident*, within the meaning of a policy like the present."

Lord COLERIDGE, C. J., delivering the opinion, said: "I am of opinion that this judgment should be affirmed, *and that on very plain grounds.* It appears to be clear from the statement in this case that the insured died from drowning in the waters of the brook whilst in an epileptic fit, and drowning has been decided to be an injury caused, in the words of this policy, 'by accidental, external and visible means.' * * * *The death was not caused by natural disease*, or weakness, or exhaustion consequent upon disease, *but by the accident of drowning.*" To sustain the contention of the defendants, the court says there must have been an "injury *caused* by natural disease, as if, for instance, in the present case, epilepsy had really been the *cause* of the death. The death, however, did not arise from any such cause."

The last of the English cases[1], is slightly different in its facts. James Lawrence effected with the defendant a policy of *accident* insurance. While the policy was in force the insured was taken suddenly ill, and fell forwards in a fit across a railway track, and was killed by a locomotive engine that moment passing over his body. HALL, Q. C., argued for the plaintiff that "The fit in no way contributed to his death, *except in this sense, that but for his being seized with it he would not have fallen across the railway.*" Of *Winspear* v. *Accidental Ins. Co.* he says: "It was held that the company was liable *on the ground that the death was not caused by disease, but by the act of drowning.* The same reasoning applies to the present case. * * * *Here the fit was no part of the immediate cause of death.*"

[1] Lawrence v. Accidental Ins. Co. 7 L. Rep. (Q. B. Div.) 216.

BRUCE argued for the defendant that "The present policy insures *not against sickness*, but against *accident* only; and the court will consider not what was the *cause of death*, but what was the cause of the accidental injury." (Why not the cause of that cause?) "Before the present policy takes effect there must be an actual injury by accident to the insured. * * * *Here the accident actually arose from the disease.*"

HALL, Q. C., replied that "*The real question is, what was the cause of the death of the insured? The fit was only one of a series of events* (a condition) *which led to his falling upon the railway.*"

Whereupon, WATKINS WILLIAMS, J., delivering the opinion, said: "*I am clearly of opinion that the plaintiff is entitled to recover*, and I desire to base my decision upon reason and principle, and not upon decided cases. It seems to me perfectly clear, and altogether free from doubt, that upon every principle of construction, and upon the true meaning of this policy, the company are liable." Continuing, the court said: "The question is, *whether* * * * *it can be said that this is a case of death arising from a fit.* * * * It seems to me that the well-known maxim of Lord BACON, which is applicable to all departments of the law, is directly applicable to this case. Lord BACON'S language, in his maxim of the law, Reg. 1, runs thus: 'It were infinite for the law to consider the causes of causes and their impulsions one of another; therefore it contenteth itself with the immediate cause.' Therefore I say, according to the true principle of law, we must look at only the immediate and proximate cause of death; and it seems to me to be impracticable to go back to cause upon cause, which would lead us back, ultimately, to the birth of the person, for had he never been born, the accident would never have happened." DENMAN, J., in a concurring opinion, discussed and relied upon *Winspear* v. *Accidental Ins. Co.*

Do not those cases fully support *Scheffer* v. *R. R. Co.*? Epilepsy is one form of insanity, and suppose that the insured, instead of having fallen, while insensible, into

the water, or before the engine, had thrown himself involuntarily into the pool, or before the locomotive (*and who knows that he did not*), could it with any more propriety be said that death was caused by disease, in the former, than in the latter manner? In both cases insanity was a *condition* of death, rendered him liable thereto, but did not *cause* it. With insanity *alone* it would never have happened. It was *caused*, *produced* only by the immediate act of self-destruction. As "it presents no difficulty" to this court to decide that "the proximate cause of the death of *Scheffer* was his own act of self-destruction," as LORD COLERIDGE was of that opinion "on very plain grounds;" as WATKIN WILLIAMS, J., was "clearly of opinion" that such was the law, "upon reason and principle," it would seem to be worthy of the consideration of plaintiff in error, whether, if it desires to be protected from the infinite variety of accidents to which the incapacity of a lunatic renders him subject, as leaping from a window, precipitation from a precipice, dashing in front of a locomotive, plunging into a stream, attacking a fellow-man, and being killed by him in self-defense, it would not be better to put a condition in the policy that they should not be liable for any accident to the insured while insane, rather than to attempt to convince a court *that the accidents described above were caused by disease?*

The case of the plaintiff in error, however, would fail, because of still another line of authority. A class of cases of high standing in criminal jurisprudence hold, that for insanity to succeed as a defense to crime, two things must appear. First, that the defendant was insane, and second, *that the insanity caused the alleged criminal act*. To show the latter, it is not sufficient to prove that the defendant was insane at the time. *As a matter of law*, the destruc-

tion of one's fellow-being *does not result from the disease* —homicidal insanity—*it must be proved as a fact.*[1] Right here is the vice in the whole argument of the plaintiff in error upon the question of proximate cause. It is the failure to distinguish between what can *as a matter of law* be pronounced the proximate cause, and what *the jury* may, under instructions, find to be such a cause. Plaintiff in error asks if it is not plain that insanity is the proximate, *if it caused* the insured to commit the act. We answer, yes; but reply that it is nowhere shown that insanity did cause the act; that such a question is, as shown in the criminal cases *supra*, and by authorities on page 21 *supra*, so uncertain that it must be left to the jury. Plaintiff in error would rely upon *Miller* v. *The Mu. B. Ins. Co.*,[2] where the insured, while intoxicated, rushed naked into the cold and died from exposure, and it was *left to the jury* to determine whether the death was *caused by intemperance*. We claim that the case gives plaintiff in error no support. We would refer the court to the same case when previously before the court,[3] when the defendant objected to an instruction which left the same question to the jury, on the ground that the court should pronounce *as a matter of law* that the *death was caused by intemperance*. The court refused so to hold, declaring, after considerable discussion, that "A proximate cause of an effect is that which immediately precedes and produces it. * * * When several causes contribute to death as a result, it may be extremely difficult to determine which was the remote and which was the immediate cause; yet this difficulty does not change the fact that death is to be attributed to the proximate, and not the immediate cause."

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[1] State v. Jones, 50 N. H. 398.
State v. Pike, 49 N. H. 407, 408 and 438.
Bradly v. State, 31 Ind. 509.
King v. Hadfield, 27 St. Tr. 1314. per Erskine.
4 American Law Review, 251.
[2] 34 Iowa, 222.
[3] 31 Id. 236.

As to the excerpts from several opinions relied upon by plaintiff in error to establish a doctrine contrary to that hereinbefore advocated, it is sufficient that the remarks quoted were made in cases where the point here involved not only did not, but could not, arise. Those remarks were made with reference to actions brought upon life policies which insure against *death*, whether by disease or accident. It was *only* necessary to show in those cases that the insured *died*, and that the mode of death was not within any *condition* of the policy. There being *no condition* in those policies against *death by disease*, the question here discussed could not, properly, and indeed, does not, appear to have been before the court.

In no case was issue joined in argument by the attorneys upon the question whether death was caused by disease. It did not appear to them to control or bear upon the case; nor was it considered by the courts as an element, or a ground, of decision. In short, it may fairly be said that the *dicta* relied upon by the plaintiff in error contain almost every circumstance which *Ram* in his work upon *Legal Judgments* instances as weakening the little credit of a *dictum*[1]. Among those circumstances are: *First*, the *dictum* was upon a point not in controversy, *and not argued by counsel*. *Second*, it has never been followed up. *Third*, the doctrine is not referred to in any subsequent case to which it *would* apply. *Fourth*, a *dictum* amounts to nothing when the same point has subsequently been *decided the other way*. *Lord Mansfield* said: "The *obiter* saying in *to Modern* would *signify nothing* when the *determinations* are the *other way*."[2]

It is believed that it cannot be maintained, that the

[1] P. 104.

[2] 1 Burr. 153.

death of the insured was not accidental, because caused by disease.

The attention of the court is now invited to a review of a long and unbroken line of *dicta* and *a decision* of a *nisi prius* court, to the effect that such a death is accidental. The quotations which follow may seem extensive, but it is desired to show that such a death is, from *a long and universal* understanding, accidental.

To begin with, the first system of jurisprudence to which on doubtful questions we look for light, it is declared that: "As damage can be done even by a person who does not intend to do harm, the question may be asked whether it may not be done by a person without a will: a lunatic. The question is, however, answered in the negative, *for there is nothing which can be attributed to a person lacking the necessary capacity of action.* If, therefore, damage is actually caused by the corporeal movements of a lunatic, *an Aquilian action is as little applicable as in other cases of a mere accident: e. g., if a tile had fallen down or a quadruped had done damage.*"[1] This, the first authoritative expression of any nation, supports our position that the acts of an insane man are *accidents*.

The French, molding their law from the Roman, have never, to this day, seen fit to make any change in it, as above expressed. Accordingly, a late French writer upon the law of torts lays it down that an insane person is not liable for torts, *for the reason* that an act of such a person "is a case of accident, as much as if a tile should fall from a roof and kill a person beneath."[2]

These two expressions, one recent, the other before the Christian era, bring to our position the sanction of the

[1] The Lex Aquilia, being a "Systematic Exposition of the Roman Law of Damage to Property," by Grueber, p. 13.

[2] Sourdat on Traité Général de la Responsibilitié ou de l'Action en Dommages interets en de hors des Contracts; quoted in 8 Am. L. Rev. 508.

oldest, and one of the two greatest existing systems of jurisprudence.

In the Common law it was always a vexed question, and, indeed, it is still occasionally argued, whether an insane man should be liable for his torts. While it is uniformly held that such a person is liable, it is not disputed that such torts are accidents. The estate of the lunatic is held liable for the effects of such accidents, on the ground of public policy, the policy being that those interested as successors to his estate will, in such case, take means to prevent injury from his acts, that his estate may not be wasted.[1] Mr. Justice COOLEY says:

" One eminent law writer has doubted if there ought to be any responsibility in such a case. ' In the case of a *compos mentis*,' he says, ' although the intent be not decisive, still the act punished is that of a party competent to foresee and guard against the consequences of his conduct; and inevitable accident has always been held an excuse. *In the case of a lunatic * * * it may be urged that the act belongs to the class* of cases which may well be termed *inevitable accident*.' "[2]

To this Judge COOLEY says: " *This view would be perfectly sound and unanswerable*,"[3] were it not that public policy requires liability for such acts, although they belong to the class of cases properly termed accidental.

TIMOTHY BROWN, Esq., considering this question on principle, maintains that a lunatic should not be liable for his torts, *because* they are " inevitable accidents,"[4] failing to recognize any principle of policy to make an exception to the rule. Thus, it appears that in the Common law, the conclusion, both of the old and modern Civil law, that

[1] Cooley on Torts, pp. 99, 100.
[2] Id. 99.
[3] Cooley on Torts, p. 100.
[4] 1 Southern Law Rev. (N. S.) 346.

the acts of a lunatic are accidents, is not disputed; that Mr. Justice COOLEY, a recent and most authoritative writer, endorsing the language of one styled by him an "eminent law writer," says, that such a claim is "perfectly sound and unanswerable."

From another point of view the light of the Common law has been thrown upon this question with the same result.

When the question first arose, whether self-destruction by an insane person was within the condition against suicide, in a life policy, it was determined as the true construction of the condition, that it was not to extend to deaths which are properly termed accidental. The only question then remaining was, whether self-destruction by an insane man was an accidental death. Such it is claimed is the reasoning upon which every case has been founded, where it has been held that such a death is not within the condition against suicide. In the first opinion in the first case,[1] upon that question it is said: "This principle of construction requires the exclusion from the * * * operation of the condition * * * those cases to which it is admitted not to apply—such as accident." The question under that construction then was, did that case come within such cases as may be called accidental. In a leading American case,[2] after a very labored discussion of the true principle of construction of such a condition, the conclusion is reached that: "If the death was caused by accident, * * * then it may be justly held to be a loss, not excepted, within the meaning of the proviso." The question then determined was, whether the death in

[1] Borradaile v. Hunter, 5 M. & G. 654.

[2] Dean v. Am. Mu. L. Ins. Co. 4 Allen, 96.

question came within the class not covered by the condition.

When the question first arose in this court[1] it was said: "It is not claimed that accidental self-destruction is within the proviso;" and the question then was whether the death in question could be classed with those held not to be within the proviso.

So in the first New York case[2] the court said:

"It was not contended on the part of the defendant that the policy would be avoided by a mere *accidental* destruction of life by the party himself. * * * It seems to me this is a yielding of the whole question. * * * His acts are not the result of thought or reason, and no more the subject of punishment than those which are produced by *accident*."

It will appear on examination that in every case, where the question was one of first instance, the same reasoning was adopted. May on Insurance, 2d ed., p. 307, beginning his discussion of such conditions in policies, says: "All the authorities * * * agree that an *accidental* death * * * is not within the exemption. But whether suicide by an insane man is also within the exemption has been the question in dispute."

It is now affirmed that the reasoning upon which in that line of cases the conclusion was reached, that suicide by an insane person was not within the condition against death by suicide, was that such a death was accidental.

The following expression is an illustration of what the court must already have noticed to be the frequent use of *in*voluntary synonymously with *accident*, viz: "leaving it in doubt whether 'suicide' expressed intentional, volun-

[1] Life Ins. Co. v. Terry, 15 Wal. 591.

[2] Breasted v. Farmers' Loan & Trust Co., 4 Hill, 73.

tary, *or involuntary, accidental*, self-destruction."[1] It will be remembered that in *Scheiderer* v. *Travellers' Ins. Co.*, 58 Wis. 15, *supra*, the question was whether an *in*voluntary self-destruction was accidental, and the court, in holding that it was, said that *that word* was one of the strongest and clearest by which to express an accidental act.

In the reported argument of the attorney for the plaintiff in an old case, it was said: "A man might wake from a state of somnambulism and find himself on the brink of a precipice, and under an *irresistable* impulse might throw himself (involuntarily) down. But, in either case, *how does a death so produced differ from one occasioned by accident?*[2]"

The learned *Chief Justice Robertson*, of *Kentucky*, discussing *Dean* v. *Am. Ins. Co.*, 4 Allen, 102, said: "To escape the absurdity of including death by accident the opinion concludes that the avoiding act must be *voluntary*."[3] Hence, if *in*voluntary, it would be accidental. Again, the same judge says: "The parties to the policy must be presumed to understand, and consequently to have contemplated by the words, 'If he die by his own hand,' the death of a sane man, by his own *voluntary* act, and *not by accident*, or the merely mechanical hand of a maniac."[4]

In an article on *Legal Responsibility and Accountability*, in the revised edition of the second series of *Medico-Legal Papers*, p. 284, a crime committed by an insane man is said to be a "*mere accident*."

In Du Saulle, Berryer et Pouchet's Medecine Legale, 2d ed. (1886), p. 582, after having discussed the nature of suicide by an insane man, it is said that such person

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[1] Supreme Commandery K. G. R. *v.* Ainsworth, 71 Ala. 446.
[2] Borradaile *v.* Hunter, 5 M. & Gr. 652.
[3] St. L. Mu. L. Ins. Co. *v.* Graves, 6 Bush. 272.
[4] Id. 275.

" shonld not be considered as having intended to kill himself. *It was nothing more than an accident.*" (" Ne saurait etre considere comme ayant voulu, se donner le mort. It n'y a la qu'un simple accident.")

In another case PATTERSON, J., said: " Now, the words themselves are large enough to embrace all self-destruction, as well as murder; not indeed, as was admitted in *Borradaile* v. *Hunter*, to embrace cases of mere *accident or insanity*."[1] In the same case, POLLOCK, C. B., said: " When a man kills himself inadvertently, or *in*voluntarily, it comes under the legal description of *accidental* death."

WILLARD, J., has held the following language: " It was not contended, on the part of the defendant, that the policy would be avoided by a mere *accidental* destruction of life by the party himself. * * * It seems to me that this is a yielding of the whole question. An insane man, incapable of discernment between right and wrong, can form no intention. His acts are not the result of thought or reason, and no more the subject of punishment than those which are produced by accident. * * * If the insured, while engaged in his trade as a house-joiner, had accidentally fallen through an opening in the chamber of a house he was constructing and lost his life, the argument concedes that the insurer would have been liable. *The reason is that the mind did not concur with the act* (that it was *in*voluntary). *How can this differ in principle from a death in a fit of insanity, when the party had no mind to concur in or oppose the act?*"[2] " A death by accident and a death by the party's own hand, when deprived of reason, stand on principle in the same category. In both cases the act is done without a controlling mind (involuntarily). If the insurer is liable in the one case, he should be in the other."[3]

This court has said[4]: " Nor do we see any difference for this purpose, in the meaning of the expressions, commit suicide, take his own life, or die by his own hands.

[1] Clift *v.* Schwabe, 3 C. B. 437.
[2] Breasted *v.* The Farmers' L. & T. Co., 8 N. Y. 305.
[3] Id. 306.
[4] Life Ins. Co. *v.* Terry, 15 Wall. 591.

With either expression it is not claimed that *accidental* self-destruction * * is within the *proviso.*" Waxing stronger in a later case it declared that such a case " appears to us to come within the forcible words uttered by the late Mr. Justice NELSON, when *Chief Justice of New York*, in the earliest American case upon the subject: 'Speaking legally, also, * * self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to his own hand than to the deadly instrument that may have been used for the purpose;' and whether it was by drowning or by poisoning, *or by hanging*, or in any other manner, 'was no more his act in the sense of the law than if he had been impelled by irresistible physical power.' *Breasted* v. *Farmers' Loan and Trust Co.*, 4 Hill 73, 75."[1]

Reasoning that an insane suicide was not within the proviso of a life policy against death by suicide, it was declared that " it would be most unreasonable to interpret it as including death by *accident*, though the direct, immediate act of the insured may have contributed to it."[2]

BIGELOW, C. J., has held: that " If death was caused by *accident*, * * * in the madness of delirium, or any combination of circumstances from which it may be fairly inferred that the act of self-destruction was not the result of the *will* or *intention* of the party, * * it may be justly held to be a loss not excepted. A party cannot be said to die by his own hand * * whose self-destruction does not proceed from the exercise of an act of *volition*, but is the result of *accident*, or of other circumstances over which the *will* can exercise no control "[3] (*in*voluntary).

In another case, in *Massachusetts*, it was said: " But ALDERSON, B., says the words do not apply to cases in which the *will* is not exercised at all " (*in*voluntary), *as* when death results from an *accident* or *delirium*."[4]

[1] Manhattan Life Ins. Co. v. Broughton, 109 U. S. 131.
[2] Supreme Commandery K. G. R. v. Ainsworth, 71 Ala. 448.
[3] Dean Am. L. Ins. Co., 4 Allen, 96.
[4] Cooper v. Mass. Mu. L. Ins. Co., 102 Mass. 227.

In a case in *New York*, it was declared that "The condition ought * * to exclude only those cases in which these motives could not have operated — such as *accident or delirium*. * * Considerations of public policy are undoubtedly in favor of confining the exceptions to the condition to cases in which the self-destruction is clearly shown to have been *accidental* or *in*voluntary."[1]

Vice-Chancellor WOOD announced that such a death was "really just as much an accident as if he had fallen from the top of a house."[2]

The learned Chief Justice APPLETON said that "The insane suicide no more dies by his own hand than the suicide by mistake or accident"[3]; "death by the hands of the insured, whether by accident, mistake, or in a fit of insanity, *is to be governed by one and the same rule*."[4]

MILLER, J., speaking for the court in *Maryland*, said: "If a man's consciousness, reason and *will* are overpowered and he is *impelled* to the act by an insane impulse, which he cannot resist (*in*voluntary), *how can it be any more justly said that the resulting death was by his own hand or act, than if he had killed himself by accident*."[5]

It has been tersely stated that "*It is agreed on all hands*, that when death is the result of an insane impulse, which he cannot resist" (*in*voluntary), "*the act is to be viewed precisely as though it were the result of an accident*."[6]

In the Life of Sir James Mackintosh, by his son, it is said that the act of an insane man is "an accidental consequence."[7]

Acts of an insane person are done without malice or

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[1] Van Zandt *v.* Mu. Ben. L. Ins. Co., 55 N. Y. 177.
[2] Horn *v.* Anglo-Austrian & U. F. L. Ins. Co., 7 Jur. (N. S.) 673.
[3] Eastabrook *v.* U. Mu. L. Ins. Co., 54 Me., 227.
[4] Id. 229.
[5] Knickerbocker L. Ins. Co. *v.* Peters, 42 Md. 421.
[6] Lawrence *v.* Mu. L. Ins. Co. of N. Y., 5 Bradwell 287.
[7] Am. Ed. vol. 2, p. 27.

aforethought, and accordingly The British Association for the Advancement of Science has recommended[1] that the expression, "not occasioned by malice aforethought" be used in insurance policies, instead of "Accidental Death," as being a better expression of the same meaning.

In an interesting opinion which should be read, of such deaths, it was declared, that "*Deaths so caused are held to be deaths by accident within the meaning and purpose of policies of insurance against accident.*"[2]

In the opinion in *Mallory* v. *Travellers' Ins. Co.*, 47 N. Y. 56, is the following: "The judge did charge that if his condition at the time was such that he could not distinguish right from wrong, if it was such that he could not be held in his own mind to know that he was doing an act which would produce death *then*, he was an *in*voluntary agent, and the result of that *in*voluntary act producing death was an *accident*. This part of the charge was not excepted to." The suit in that case was upon an *accident* policy, and though the point was not passed upon by the *Court of Appeals*, it shows a full and square decision of the point by a *nisi prius* court.

While this long line of *dicta* and *Scheiderer* v. *Travellers' Ins. Co.*, *Mallory* v. *Travellers' Ins. Co.*, and the three *English* cases *supra*, are not considered *alone*, as absolutely binding upon the court in this case, it is nevertheless sincerely believed that a court can not oppose them. If such a death is not accidental according to any *principle* in the definition of an accident, what is that principle, and where is its authority? If such is not an accidental death, on *authority*, how comes this long, continuous, universal, indeed most remarkable, concensus of opinion?

[1] The Law of Accidents, vol. 10, p. 219, of Hours at Home.

[2] Pierce v. Travellers' Ins. Co., 34 Wis. 396.

In the court below we laid upon the defendant a challenge for authority against that upon which we rely. That challenge is not withdrawn; Yet, it did not then, it can not now, bring from the law or literature of any nation but a single fragment upon which to rest its case. Well might that be passed with the remark that its isolation is its answer, but we prefer to show that it is a *felo de se*. In *De Gogorza* vs. *Knickerbocker L. Ins. Co.*,[1] a majority of the court said: "We are asked to decide that the addition of the words 'sane or insane' to the words of a policy that the insurer shall be excused if the assured 'die by his own hand or act' means nothing, *and it is urged by way of argument* that if a madman causes his own death, it is no more than a mere accident, and that, therefore, a death caused by mere accident and by one in no way responsible for his acts, is in fact the same thing. A death by accident, within the meaning of that term as used in conditions of insurance, is not a death resulting from insanity, and in that connection has no reference to the condition of the mind of the party so dying. It has relation to casualties of a different character by which life is destroyed, and the language of a contract, unless there are special reasons to the contrary, must have a construction according to its common and ordinary meaning, as the majority of mankind would understand it *It is, therefore, not too much to say that a suicide, the result of a partial or total aberration of mind, would not, in the judgment of the great majority of mankind, be regarded as an accidental death.*"

The last few lines italicised are undoubtedly the *ground* of the opinion. We join issue thereon, and *deny the holding of such opinions by the majority of mankind*, and for evidence of the opinions of such majority refer to what we have hereinbefore shown, and to whatever our opponents may show upon the subject. When this opinion was rendered, the court consisted of Judges LOTT, GRAY, EARL, REYNOLDS and DWIGHT. Judges EARL and

[1] 65 N. Y. 237.

DWIGHT, the two best known members of the court, dissented and held that: "Such a case would properly be classified with accidents." The Supreme Court, consisting of Judges GILBERT, TAPPAN, PRATT and BARNARD, unanimously held in accordance with the dissenting opinion in the Commission of Appeals, saying, "That death by accident and death by the party's own hand stand on principle in the same category."[1] The opinion of the *nisi prius* court was in accordance with that of the Supreme Court, and the dissenting portion of the Commission of Appeals. In this case, then, we have the court below, the Supreme Court, and two judges of the Commission of Appeals, being in all seven judges, against three of the Commission of Appeals. We think it is apparent that the court will have to seek some other reason than *the understanding of a majority of mankind* to rest its opinion upon.

Again, the court said: "We are not altogether unmindful of the force of the proposition that a man does not die by his own hand who has not sufficient mind to will his own death." Here is a distinct admission of the force of the position of the writers upon jurisprudence, viz., that the corporeal movements of a lunatic are not his acts, but the same as the movements of some other person, or of some external thing in nature. The force of this admitted, how can the conclusion that such movements are accidental to him, be escaped?

Still, again, it should be noticed, that of this question the court said:

"This question was somewhat argued, but, I think, not specially relied upon by the counsel for the plaintiff."[3]

[1] 8 Albany L. J. 10.
[2] 65 N. Y. 241.
[3] p. 242.

In short, as to this case, we say, that the ground upon which the court rested it cannot be maintained; that it is inconsistent, in that it admits the validity of a proposition irreconcilable with its conclusion; that the question arose only as an argument and was not fully argued; and that the conclusion therein reached is in direct conflict with universal opinion, since the time of the early Roman law.

II.

The case does not come within the condition against death caused by suicide or self-inflicted injuries.

It is thought that upon this point it is sufficient to refer to the decisions of this court.[1]

III.

The grammatical and legal meaning of the condition against death caused "by bodily infirmities or disease" is, that the policy shall not extend to death caused by bodily infirmities or BODILY ***disease. Hence, admitting the death of the insured to have been caused by insanity, a mental disease, it is not, according to common acceptation, within the condition against death caused by bodily infirmity or*** BODILY ***disease.***

For *disease*, to be unqualified by *bodily*, and include any disease, bodily or mental, the condition should have been worded as follows, viz: "by bodily infirmities or *by* disease," or "by bodily infirmities or *a* disease." This is in accordance with an old precept known as Campbell's rule, which a standard author has stated thus: "If the first noun follows an article or a preposition, or both, the arti-

[1] Life Ins. Co. *v.* Terry, 15 Wal. 580. Manhattan L. Ins. Co. *v.* Broughton, Life Ins. Co. *v.* Rodel, 95 U. S. 232. 109 U. S. 131.

cle or the preposition, or both, should be repeated before the second when the two nouns are intended to denote different things; and should not be repeated when they denote the same thing." [1]

Upon that ground it has been held, that one could be punished only for converting "bank notes" where the statute made it criminal to convert a "bank bill or note;" and, as the conversion in the case in question was not of a *bank* note, the prisoner was discharged. [2]

For like reasons this court has held that "final hearing or trial" meant "final hearing or *final* trial." [3] Granting then, for argument, that death *was* caused by insanity, a *mental* disease, is it within a condition against death caused by "*bodily*" disease? Whether all *mental* disease is *bodily* disease, is a vexed scientific question with which we have nothing to do. The weight of authority probably is that *a mental*, is inseparable from a *bodily* disease. Yet an eminent authority, whose views correspond with that weight of opinion, says: "We think sufficient evidence has already been educed to show that insanity is a *physical*, not a *mental* disease, and *yet the proof par excellence remains to be offered.*" [4] *Taylor*, in his work on *Medical Jurisprudence, Vol. 2, p. 476*, says that: "In an insane person there may be no bodily disease." Whether this be scientifically true

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[1] Bardeen's Complete Rhetoric, p. cxxii; Obs. 85.
See also Id., pages xxxiv and xxxv; Obs. 13 and 14; and
Boyd's English Composition, p. 41; sec. 7.

[2] State v. Stinson, 4 Zabriske, (N. J.) 9.

[3] Ins. Co. v. Dunn, 19 Wal. 224. In this case the court said: "It is contended that the qualifying adjective *final* applies to the term "*hearing*" and not to "*trial*," and that any *trial*, whether final or not, is conclusive against the petitioner. This is too narrow a view. It is contrary to the grammatical construction, and the obvious import of the words. The repetition of *final* before *trial* would have been tautology. To produce such a result as that contended for, the indefinite article should have been, placed before the word "*trial*," so that the language would have been before the final hearing *or a trial*. This would doubtless have been done if such had been the intent of the act."

[4] Buckham on Insanity in its Medico-Legal Relations, p. 69.

or not we contend that in their *ordinary acceptation, that according to conventional usage*, the words *bodily* disease do not include, would never be understood to mean, *insanity or mental disease*. The very fact that scientific men have long discussed the question whether there is any mental without bodily disease, shows most clearly that the words *bodily* and *mental* have been used to distinguish *two kinds of disease*. Under the term *mental* disease could not be included ague, small-pox, rheumatism, or any other disease affecting the *body*. Wherein is it more correct, popularly speaking, to class insanity as a *bodily* disease? Was not the word bodily intended to *qualify* disease? What other qualification can it have than to exclude *mental* disease? There is no possible escape from this.

Plaintiff in error examined two expert medical witnesses, both of whom, on cross-examination, testified that *they* would not expect an unprofessional man to intend insanity, or any disease of the mind, by the expression, *bodily disease*.

Dr. S. V. Clevenger, on cross-examination, testified as follows (*Record, p. 47*):

Q.—" If a non-professional man should speak of a man having *bodily* disease, would you think that he had insanity?

A.—No.

Q.—You would not expect a non-professional man, who was unaquainted with scientific truths, to mean that?

A.—No, sir; in general parlance; but then, the public have very erroneous ideas in regard to disease."

Dr. Joseph L. Gray, on cross-examination, testified as follows (*Record, p. 47*):

Q.—" Would you expect, if an ordinary man spoke to you of a bodily disease—I mean a non-professional man, a business man—that he included insanity?

A.—I should not."

Insanity has been popularly defined as follows:

" A general term, under which are included all the varieties of unsound *mind*."[1] " Insanity means all unhealthiness of *mind*."[2] " Unsoundness of *mind*."[3] By a learned medico-legal writer, it is said: " We have come *even systematically* to speak of ' *mental* diseases.' • • • But the power of *conventionalism* is the only explanation of the *persistence* of the phrase, ' mental diseases.' "[4] It is good evidence of the *systematic* classification of insanity as a mental disease, that *Dr. Maudsley*, who believes there is no insanity without bodily disease, has entitled one of his books " Responsibility in *Mental* Disease;" that in *Caspar's Forensic Medicine*, Vol. 4, p. 92, is a chapter on " Disputed *Mental* Diseases," and on page 75 a chapter on " Disputed *Bodily* Diseases;" that *Rattigan*, on *The Roman Law of Persons*, pages 17–19, treats of a subject entitled " *Physical* and *Mental* Defects;" that in *Kaufman's Mackeldeley's Modern Civil Law*, p. 137, persons are classed, according to health, under the heads of " Health of *Body*," and " Health of *Mind*." Numberless citations of the same kind could be made. Moreover, the defendant below itself has made a *systematic* use of the word in statement No. 12 of its application, which reads thus:

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[1] Zell's Condensed Encyclopedia.
[2] Chambers' Encyclopedia.
[3] Webster's Dictionary.
The synonyms given by Webster are " Lunacy, Madness, Derangement, Alienation, Abberration, Mania, Delirium, Frenzy, Monomania, Dementia."
[4] Buckham on Insanity in its Medico-Legal Relations, p. 66.

"I have never had any *bodily* or *mental* infirmity."[1] This point will not be pressed further upon the attention of the court, as it is believed to be obvious.

IV.

The expression in the fifteenth clause of the application, that "I am aware that this insurance will not extend to * * * death * * * caused by bodily infirmities or BY disease," is sufficiently comprehensive to cover death by any disease, bodily or mental; but the expression is no part of the contract.

a.— The policy referring only to the warranties, in the application, and containing no words to make the application, or any part thereof other than the warranties, a part of the policy, does not incorporate within itself the fifteenth clause of the application, which is not a warranty.

The plaintiff in error answers the position of defendant in error in proposition III by reading the fifteenth clause of the application, which, so far as it is material, is as follows: "I am aware that this insurance will not extend * * * to death * * * caused wholly or in part by bodily infirmities, or *by* disease."[2] We admit that, "By disease," includes *any* disease, physical or mental, but reply that *it is no part of the contract*. The only reference in the policy to the application is as follows: "In consideration of the *warranties* made in the *application* for this insurance."[3] The policy in *no place* says "which application is made a part hereof," or anything to that effect. The only things in the application which are referred to by the policy are *warranties*. As *the learned court below* observed, the fifteenth clause "is not a war-

[1] Rec. p. 23.
[2] Id.
[3] About middle of Rec. p. 2.

ranty."[1] A warranty is a representation or undertaking in regard to the existence of some *fact* material to the contract. The fifteenth clause of the application states a *condition*, in the event of which the policy shall not apply. The very same language, with the exception of the differences noticed, is used in the policy *as a condition, being placed in the part of the policy which contains the conditions.*[2] The fifteenth clause being *not a warranty*,[3] and the *only* reference to the application being to its *warranties*, we claim as *the learned court below* concluded, that " The fifteenth clause in the application is not referred to in the policy. Wherein therefore it differs from the written contract, it is no part of the contract."[4]

The law applicable to this state of facts is plain. It has been observed that " the courts are disinclined to make a paper *by reference*, * * * part of the contract, *unless clearly obliged to.*"[5] Also, " A *mere reference* to an application * * * in general terms, does not make its contents warranties. *To effect this, there must be other language sufficient to indicate that it was the intention to make the paper referred to a part of the contract.*"[6] Here there is not even a *mere reference* to the *application*, but *only* to a portion of it, *i. e.*, the *warranties* in it. Coming closer to the case at bar, it has been held, where there was a *general reference by the policy to the application*, with words, however, making the *conditions* in the application *a part of the policy*, that the *conditions only* became *part* of the contract; that the matter of description in the application could not be considered a part of the policy, and warranties.[7] If, as held in that case, a general reference

[1] About middle of Rec. p. 16.
[2] Under second *proviso*, Rec. p. 3.
[3] Indeed, plaintiff in error did not dispute this below, and doubtless does not here.
[4] Rec. p. 16.
[5] May on Insurance, 2d ed. p. 183.
[6] May on Ins. 184.
Bliss on Ins. 2d ed. 85.
[7] French *v.* Chenango Co. Mu. Ins. Co., 7 Hill (N. Y.) 122.
Upon *limited* incorporations of the application into the policy, see May on Ins. (2d ed.) sec. 160.

to the application, with language making the *conditions* part of the policy, does not incorporate the rest of the application, certainly, in the case at bar, where there is no general reference to the application, and the *warranties* in it *only* are made part of the contract, it cannot be maintained that a *condition* in the application, or anything other than a *warranty*, is introduced into the policy. No difference can be perceived between this and a reference by one deed to the description, or a particular covenant, or condition in another. Certainly, in such case the reference does not incorporate in the former the whole of the latter.

b.— When a policy is issued with terms more favorable to the insured than his application therefor, its language controls, wherein it differs from the application, on its acceptance by the insured. This case shows an acceptance.

This is another view which sustains proposition IV. The application in the formation of a contract is the "*proposal.*" The acceptance, which here is the issuance of the policy, must correspond with the proposition made. If it does not, there is no contract till the party making the application or proposal has accepted the acceptance sent him. In the case at bar the application was made in terms more favorable to the plaintiff in error than the policy it afterwards issued thereon. The application was for insurance which should not extend to death from *any* disease. The policy issued provided that it should not extend to death caused by *bodily* disease. Certainly the insured could accept the policy covering *mental* disease, if he chose so to do, and hold appellant to that risk.[1] Did he not do it? As the policy was more in his favor than the application, it is

[1] In Myers *v.* Ins. Co., 27 Pa. St. 268, it was held that the policy, differing from the application, became, on proof of its acceptance, the contract of the parties.

to be presumed that it was accepted by him, for the law presumes that a man has done what it was his *interest* to do.[1] Besides this, the continued possession of the policy, the payment of the premium[2] by the insured and the institution of a suit thereon, show an acceptance.

In any view that can be taken, the fifteenth clause of the application is no part of the policy, and the true reading of the condition in question is, that the insurance shall not extend to death caused by *bodily* disease. That condition does not cover a death caused by a *mental* disease.

V.

Granting that the fifteenth clause of the application is part of the contract, or, if not, that the condition against death caused by bodily disease extends to a death caused by mental disease, yet in the case at bar the proximate cause of death was not the disease, but the immediate act of self-destruction.

This position is fully supported by *Scheffer* v. *R. R. Co.*, 105 U. S. 249; *Reynolds* v. *Accidental Ins. Co.*, 22 L. T. (N. S.) 820; *Winspear* v. *Accidental Ins. Co.*, 6 Law R. (Q. B. Div.) 42; *Lawrence* v. *Accidental Ins. Co.*, 7 Law R. (Q. B. Div.) 216; *State* v. *Pike*, 49 N. H. 407, 408, 438; *State* v. *Jones*, 50 N. H. 398; *Bradley* v. *State*, 31 Ind. 509; ERSKINE, in *King* v. *Hadfield*, 27 St. Tr. 1314; 4 American Law Review, 251. *Miller* v. *Mu. B. L. Ins. Co.*, 31 Iowa 236; *Carter* v. *Towne*, 103 Mass. 507; *Lewis* v. *Flint & P. M. Ry. Co.*, 54 Mich. p. 63. These authorities have already been discussed. (Pp 22 to 35, *supra*.) It is necessary, however, in this

[1] Lawson on Presumptive Evidence, Rule 70, p. 303.
[2] Rec., p. 11; 3d special finding.

place, to ask the attention of the court to the *conditions* which the polices in those English cases contained *against death caused by disease*. In the first case[1] there was no such condition. The same question was, however, discussed and decided, to make out an *accidental* death according to the doctrine of *Sinclair* v. *The Maritime Pass. Assur. Co.*, 107 Eng. Com. Law, 476, which is the Sunstroke case.

In the second case[2] the policy contained a condition, which, so far as is material, reads as follows: "Provided, further, * * * that this insurance shall not extend * * * *to any death arising from disease*, although such death may *have been accelerated by accident*." During the argument of this case for the defendants, Lord COLERIDGE, C. J., said: "What do you say to the case of *Reynolds* v. *The Accidental Ins. Co.*, which is very like the present?" Counsel for the defendants answered that "the proviso in the present policy, on which the defendants rely, *was inserted in consequence of that case*. There are only two other decisions on accidental policies; they are *Fitton* v. *Accidental Death Insurance Co.*, and *Smith* v. *Accidental Ins. Co.* In the latter case the insurers were held to be protected by a clause in the policy exempting them from liability in case of death from erysipelas, though brought on from an accidental cut; and in the other case, the court looks to the *real* and not the *proximate* causes of death. *Here the real cause of death was the fit.*" To which Lord COLERIDGE, delivering the opinion, said: 'Neither does it appear to me that the cause of the death was within those latter words of the proviso. The death was not caused by natural disease, * * * but by the accident of drowning. I am of opinion that those words in the proviso mean what they say, and that they point to an injury caused by natural disease, as if, for instance, in

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[1] Reynolds *v.* Accidental Ins. Co., 22 L. T. Rep. (N. S.) 820.

[2] Winspear *v.* Accidental Ins. Co., 6 L. R. (Q. B. Div.) 42.

the present case, epilepsy had *really* been the *cause* of death. The death, however, did not arise from any such cause; and those words have no application to the case."

In the next case[1] the *proviso* was changed, being that "it does not insure in case of death or disability arising from fits, * * * or any disease whatever arising before or at the time, or following such accidental injury." This change, made since the prior decision, with the precise facts in contemplation, was diligently and earnestly pressed upon the court, with the result which we have seen.

Thus it appears, that this question, arising in manifold forms, under conditions in policies, in questions of accident which necessarily involve it, in railway civil injuries cases, in criminal prosecutions, has been decided in a variety of forums, in this very court, in the courts of England and of the several States of this country, with a uniformity which is scarcely equaled in the history of the common law.

Certainly this court must conclude, as did *the learned court below*, that "although it may be said that Crandal would not have committed suicide had he not been insane, and, so that the insanity was a promoting cause of death, upon the reasoning and authority of the cases referred to, *the conclusion seems unavoidable*, that *the act of self-destruction must be regarded within the meaning of the policy as the true and proximate cause of his death.*"[2]

VI.

The expression, "wholly or in part," does not prevent the application of the doctrine of proximate cause to the condition against death "caused wholly or in part by bodily infirmities or disease."

There is, in law, but one cause. It is the *proximate* cause. What is called the remote cause, is not, in law, a

[1] Lawrence v. Accidental Ins. Co., 7 Law R. (Q. B. Div.) 216.

[2] Rec., p. 21.

cause.[1] For death to have been caused wholly by disease, the disease must have been wholly the *proximate* cause; to have been caused in *part* by disease, the disease must, nevertheless, have been in *part* the *proximate* cause; it must have been *a* proximate cause. This point arose in *Lawrence* v. *Accidental Ins. Co.*,[2] where the condition was against death caused by fits, and disease "whether causing such death directly or *jointly*" with something else. Upon this it was said in argument: "The defendants have clearly expressed their intention not to be liable where an accident and disease *concurrently* bring about death." To this point *Watkin Williams*, J., said: "The true meaning of this proviso is that if the death arose from a fit, then the company are not liable, even though the accidental injury contributed to the death in the sense that they were both causes which operated jointly in causing it. But it is essential to that construction that it should be made out, that the fit was *a* cause in the sense of being the *proximate* and immediate cause of death." Is it not equally essential, in the case at bar, that it be made out that disease was *a* proximate cause, to bring it within the condition against death in part caused by disease?

Was not the act of self-destruction, the *sole* cause, *independent* of all other causes, unless it be shown that the disease was *a* proximate cause?

VII.

If there be a doubt whether the case is within the conditions of the policy, that doubt is to be resolved in favor of the defendant in error.

Ever since the decision in *Life Ins. Co.* v. *Terry*, there has been in use a condition which covers a death of

[1] Bigelow's Leading Cases on Torts, 610.

[2] 7 Law R. (Q. B. Div.) 216.

the nature of that of the insured in the case at bar. It has so often been decided that it is well known, even to business men, that a condition against "death caused by his own act, *sane* or *insane*," is a full protection to the company.[1] In *Mallory* v. *Travellers' Ins. Co.*, 2 Ins. L. J. 839, a case of the same name, but different from and subsequent to the one in 47 N. Y. 52, being reported by way of "memoranda" simply, in 54 N. Y. 651, but given in full in 2 Ins. L. J. 839, *it was held that the words, "sane or insane," are a full protection in an accident policy in such cases. Those words were inserted because of the instruction in 47 N. Y. 52, not excepted to, that self-destruction by an insane man is an accidental death.*

Shall the plaintiff in error, after having enjoyed a wide reputation for the liberality of its policy, after having looked with contempt upon the restrictions which other companies, pursuant to a judicious business policy, have placed in their contracts, be allowed to escape the inevitable penalty of its conduct, and that, too, to the injury of one to whom, no doubt, this supposed liberality was held out as an inducement? It is with peculiar force that a well-known rule applies to this feature of the case. "*No* rule in the interpretation of a policy *is more fully established*, or more *operative or controlling*, than that in all cases it must be liberally construed in favor of the insured, so as not to defeat, *without a plain necessity*, his claim to indemnity. • • • When the words are *without violence*, susceptible of two interpretations, that which will sustain his claim • • • *must*, in preference, be adopted. While courts will extend all reasonable protection to insurers, by allowing them to hedge themselves about by conditions intended to guard against fraud, carelessness, want of interest, and the like, they will, nevertheless, *enforce* the salutary rule of construction, that as the language of the conditions is theirs, and *it is therefore in their power to provide for every proper case*, it

is to be construed most favorably to the insured. Thus, if a stipulation be ambiguous, and no light can be thrown upon it in accordance with the received principles of law, from extrinsic evidence, the doubt is to be resolved against the party by whom and in whose favor the stipulation is made."[1]

VIII.

Rulings admitting and excluding evidence.

I.

There is no error in the rulings.

A.— Ruling on objection, Rec. p. 29.

The first objection and exception by the plaintiff in error appears in the Record, page 29, as follows:

The wife of the insured, testifying as to his insanity, said: " He would often make use of this expression, that he though that his family ——

Counsel for defendant — " I object to witness stating what the deceased said.

Counsel for plaintiff — " I think it is proper that we connect the expression with about the time of the change.

The Court — " I am inclined to think that is admissible as part of the circumstances or *res gestæ*.

Counsel for plaintiff — " We are not asking for any conversation, but mere expressions, to show the change in the man's nature.

The Court — " I think I will overrule the objection and allow the testimony.

(Objection and exception.)"

Why objection was made is not shown.

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[1] May on Ins., 2d ed., sec. 175.
Bigelow *v.* Berkshire Life Ins. Co., 93 U. S. 284.
Adkins *v.* Columbia L. Ins. Co., 70 Mo. 27.
Chapman *v.* Republic L. Ins. Co., 6 Biss. 238.
Knights of the Golden Rule *v.* Ainsworth, 71 Ala. 436.
Schmidt *v.* Home L. Ins. Co., 8 L. J. 77.
Wharton on Contracts, vol. 2, sec. 677.
Eastabrook *v.* U. Mu. L. Ins. Co., 54 Me. 227.
Phillips *v.* La. Eq. L. Ins. Co., 26 La. 404.

Counsel for plaintiff urged its admission, and the court admitted it, as it appears, *upon the ground* that the statements of the deceased are evidence of his mental condition at the time. Such is undoubtedly the law. Since the trial, however, it has occurred to us that although such is law, it may be that objection might be made under a statute in Illinois, *because* the *wife* of the deceased testified to the point.

Section 5, entitled "Husband and Wife," of chapter 51, entitled "Evidence and Depositions," of the Revised Statutes of Illinois, so far as material to this point, is as follows:

"*Provided*, that nothing in this section contained shall be construed to authorize or permit any such husband or wife to testify to any admissions or conversations of the other, whether made by him to her, or by her to him, or by either to third persons, except in suits or causes between such husband and wife."

It may be that since the trial counsel for plaintiff in error has determined to urge that the wife could not testify to what the deceased said, because of this statute. If so, we reply that the case is not within that statute.

In the first place, that statute was intended to guard against the testimony of husband and wife, in a suit by either of them against a third party, as to the "admissions or conversations" of the other *only*, when the *truth* of those "admissions or conversations" is in issue.

In the case at bar it is not the *truth*, but the *existence* of the declarations that is in issue.

The wife undoubtedly could, notwithstanding the statute, testify to eccentric *acts* of her husband as evidence of his insanity. Why not to eccentric words? Such words are not, in the meaning of the law, "admissions or conversations." As it has been aptly said:[1] "They are not the

party's talk *about* his pain, but the *pain itself*, speaking in the natural language of pain. * * * *In so far as they are verbal*, they may be called verbal *acts*." Upon what principle is she to be allowed to testify to one *act* and not to another?

In the second place, that statute was intended to guard against the testimony of husband or wife, in a suit by either against a third party, to "admissions or conversations" of the other, *for the reason* that otherwise they might be enabled in a suit against a third party, which depended upon such "admissions or conversations" to support it, upon their own testimony alone, when from the nature of things the other party could obtain no evidence save from the bosom of the husband or wife; or if the "admissions or conversations" were in his presence, their testimony would overcome him. The statute in such case declares the husband or wife incompetent as against the third party on the ground "that unless both can be heard, and *on equal terms*, it is best to hear neither." The evidence objected to in the case at bar does not come within this reason, for in no case upon an issue as to the sanity or insanity of husband or wife, is it possible for the eccentric words of the one to be solely within the bosom of the other, as no one could ever be proved insane who was eccentric in his talk before one person only, and reasonable according to the testimony of every one else.

Such reasons have prevailed in cases under similar statutes.

In a case[2] where the issue was one of sanity or insanity, "Harriet Alexander, a niece of the plaintiff, and introduced as a witness in her behalf, testified to her aunt's want of mental capacity to make the deed, and that her opinion was formed from conversations and communica-

[1] 22 Central L. J. 512.

[2] McLeary v. Normant, 84 N. C. 235.

tions between them. The plaintiff's counsel then proposed to prove those conversations and communications, in order that the jury might see whether the opinion was well founded and the weight due to it as evidence. The court, on objection, ruled out the offered testimony, and the plaintiff excepted. * * * The evidence was rejected * * * upon the ground, that it is within the inhibition of the *proviso* of section 343 of the Code, which forbids a witness 'who has a legal or equitable interest which may be affected by the event of the action' to be '*examined in regard to any transaction or communication* between such witness and a person at the time of such examination deceased, insane or lunatic,' 'against a party then prosecuting or defending the action as executor, * * * or as assignee or committee of such insane person or lunatic,' when the interest may be affected by the result." The witness was incompetent, says the court, "if the testimony itself was of the kind intended to be excluded by the statute. * * * The proposition" that the witness is incompetent, "presupposes an *admission or statement* from which an admission may be inferred injurious to the deceased or lunatic, and it is disallowed, because the other party is unable to give his version of the matter. * * * The *proviso* proceeds upon the idea that unless both can be heard, it is best to hear neither. But the conversations offered are not to prove any fact stated or implied, but the mental condition of the plaintiff, as declarations are received to show the presence of disease in the physical system. How, except through observation of the acts and utterances of a person, can you arrive at a knowledge of his health of body or mind? As sanity is ascertained from sensible and sane acts and expressions, so may and must any conclusions of unsoundness be reached by the same means and the same evidence. The declarations are not received to show the truth of the things declared, but as evidence of a disordered intellect, of which they are the outward manifestations. * * * There seems to be no sufficient reason for receiving the opinion and excluding proofs of the facts upon which it is founded. * * * The conversations and transactions, mentioned in the Code, of which a living witness is not permitted to testify, *

* * do not, in our construction of the language and purposes of the law, embrace such evidence as was here offered and rejected, and is outside of the mischief intended to be remedied."

The question in that case, and the one in the case at bar are the same, viz: does a statute prohibiting one from testifying to the admissions or conversations of another prohibit the same person from testifying to the declarations of that other person, for the purpose of showing that person's insanity? The case last above has been approved.[1] The same conclusion has been reached in another court upon principle.[2] These are the only cases we have been able to find upon this point. The fact that two courts, independently of each other, have come to the same conclusion upon principle, it would seem, should settle this question.

B.—Ruling on objection, Record page 32.

In an answer of the wife of the insured, it came out that she had, during her husband's illness, administered bromide to him.

Whereupon counsel for plaintiff asked: "How did you come to get it?

A.—"Well a friend ——"

(Objected to. Objection overruled; exception by defendant.)

A.—"I got it on the recommendation of a friend. My friend said she used it during the day, and asked me to get some and try to induce sleep."

The fact that bromide was used to cause the assured to sleep, goes to show that he was unable to sleep, which is a material cause of insanity, and being such, it was proper to show it by any relevant evidence. The question objected

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1Hathaway v. Hathaway, 91 N. C., 139.

2Lamb et al. v. Lamb et al. 105 Ind. 458 and 9.

to, called for, and the answer contained, matter which was relevant as evidence of the insured's sleeplessness.

C.—Ruling on objection, Record page 37.

Orville P. Curran, manager of the Equitable Life Ins. Co., was asked the following question, on direct examination, by counsel for the plaintiff:

"Did your company have a policy on his life?"

(Objected to. Objection overruled. Exception by defendant.)

A.—"Yes; I wrote him $15,000 on the 15th of September previous to his death. *After that* I saw him quite frequently, and was familiar with his personal characteristics and habits of talking."

That question was eminently proper to show the nature of the origin of the witness' acquaintance with the deceased; that the foundation of the acquaintance was such that the witness had a peculiar, a financial, interest in the condition of the deceased, which necessarily made the observations by the witness of the subsequently developed condition of the insured closer than they otherwise would have been.

D.—Ruling on objection, Record page 41.

Martha Downer, a witness called by the plaintiff, after testifying to having seen and talked with the insured, was questioned as follows, by counsel for plaintiff:

Q.—"Did you make any statement to that lady" (a lady with her at the time) "when you went away?

A.—"I did.

Q.—"Of the impression that he made on your mind?

A.—"Yes, sir.

Q.—"What statement did you make to her?

A.—"I said that Mr. Crandal did not ——"

(Objected to.)

The Court—"You have the right to ask her what her belief or impression was, as derived from her observation

at the time. Does it make it any stronger to show the statement that she made?

Counsel for plaintiff—" It was a statement made at the time.

The Court—" I think I will overrule, and let her answer.

Q.—" What statement did you make to your friend after you left Mr. Crandal, in regard to his condition?"

(Objection; objection overruled; exception by defendant.)

A.—" I said to her, 'You have not seen Mr. Crandal to-day in his right mind, and I don't think he is.'"

Upon the precise question here raised there is a decision of this court which was considered by the court below, In that case[1] the court said: "One other assignment of error remains to be considered. It relates to the admission of the statements made by two witnesses of what passed between each other on the occasion of their seeing and conversing with the deceased. * * * As he left the presence of these witnesses, one of them remarked to the other that 'Pitkin is not himself; George looks kind of crazy.' * * * To the admission of this brief conversation between the witnesses * * the defendant objected, but the objection was overruled and an exception taken. * * What passed between them at the time to which their testimony referred was a part of what occurred on the occasion when they saw the deceased, and may well have been repeated to the jury, *as showing that their opinion as to the mental condition of the deceased was not then presently formed, but was formed at the very moment they saw him.*"

E.—Ruling and exception, Record page 44.

Mr. Orville P. Curran, manager of The Equitable Life Ins. Co., a witness of defendant in error, recalled by the defendant below for further *cross-examination*, was questioned as follows:

Q.—" What is the rate on a $10,000 life policy for a man of Mr. Crandal's age at that time?"

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[1]Conn. Mu. L. Ins. Co. v. Lathrop, 111 U. S. 624.

(Objected to by plaintiff *as improper cross-examination.*)

The Court—"What is the materiality of that, Mr. Bates?

Counsel for defendant—"The materiality of it is, that in arguing this motion from cases that are decided on life insurance policies, I desire to show by this witness that the premium would be much greater than this policy; that life insurance would cost more.

The Court—"I don't think that the testimony that you seek to elicit can aid in the consideration of this policy."

(Objection sustained. Exception by defendant.)

This witness had been examined in chief as to the insanity of the insured. Certainly the question asked and ruled out by the court was improper on cross-examination, aside from the ground upon which the court ruled, which is also deemed a sufficient objection to the question.

II.

IF THERE IS ERROR, IT DID NOT PREJUDICE THE DEFENDANT.

A.—Ruling on objection, Record page 29.

If this ruling was erroneous—if evidence admitted thereby had been excluded—there would have been the opinion of the same witness based upon the *acts* only, and not the *words* of the deceased, and the opinions of eight other witnesses based upon the circumstances by them severally detailed.

Certainly such an error is not material.

B.—Ruling on objection, Record page 32.

It is not apparent how it injured plaintiff in error to allow the witness to tell "how she came to get" the bromide which was administered to the deceased, even if it was error so to do. Nor does it appear that the case of defendant in error would be affected if the answer to that question were stricken out.

C.—Ruling on objection, Record page 37.

Same remarks apply to the question here objected to, and allowed as to the objection last above noticed.

D.—Ruling on objection, Record page 41.

While this court has held that this ruling was not erroneous, it said in the same case,[1] that even if so, it was not an "error to the prejudice of the substantial rights of the company."

E.—Ruling and exception, Record page 44.

The same may be said as to the question here refused as was said as to the one allowed in "Ruling on objection," third last above noticed. In addition, it may be said that the fact not allowed to be proved here was proved afterwards by plaintiff in error, by a witness named Mathew M. Gaylord. (*Record, page 47.*)

III.

ALL THE OBJECTIONS TO EVIDENCE WERE GENERAL, WITHOUT A STATEMENT OF THE GROUNDS THEREOF; HENCE NO QUESTIONS THEREON CAN BE RAISED IN THIS COURT.

Upon this question there are two distinctive lines of authority. In the first class it is held that a simple objection, without a statement of any ground thereof, raises no question. In the second class it is held that such general objection goes only to the relevancy or competency of the evidence, or such objections as would be likely to suggest themselves to the mind of the court. The doctrine of the first line of cases is held in this court;[2] In England;[3]

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[1] Conn. Mu. L. Ins. Co. v. Lathrop, 111 U. S. 624.

[2] Hinde's Lessee v. Longworth, 11 Wheaton, 199.
Burton v. Driggs, 20 Wallace, 125.
Camden v. Doremus et. al., 3 Howard, 515.
Thomas v. Lawson et. al., 21 Howard, 331.
Young v. Martin, 8 Wal. 354.
Ins. Co. v. Lea, 21 Wal. 161.
Stebbin v. Duncan, 108 U. S. 46.
Fischer v. Neil, 6 Fed. Rep. 89, per Blatchford, J.

[3] Bain v. Whitehaven & C. R. R. Co., 3 House of L., 15 & 16.

Arizona;[1] Arkansas;[2] California;[3] Colorado;[4] Florida;[5] Georgia;[6] Indiana;[7] Iowa;[8] Louisiana;[9] Massachusetts;[10] Maine;[11] Missouri;[12] Montana;[13] New Hampshire;[14] New Jersey;[15] New York;[16] North Carolina;[17] Vermont;[18] Wyoming.[19] The doctrine of the second line

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[1] Rush v. French, 1 Arizona, 124.
[2] Hurley v. State, 29 Ark. 23.
[3] People v. Apple, 7 Cal. 289.
Covilland v. Farmer, 7 Cal. 38.
Kiler v. Kimball, 10 Cal. 268.
Martin v. Travers, 12 Cal. 243.
Owen v. Fink, 24 Cal. 171.
Leet v. Wilson, 24 Cal. 399.
Winans v. Hassey, 48 Cal. 634.
Sweed v. Osborne, 25 Cal. 619.
[4] Watson v. Hahn, 1 Colo. 494.
Consolidated Gregory Co. v. Raber, 1 Colo. 512.
[5] Gladden v. State, 15 Fla. 573.
[6] Jackson v. Jackson, 47 Ga. 100.
McDaniel v. Edwards, 56 Ga. 444.
Urquhart v. Leverett, 56 Ga. 95.
Peters v. West, 70 Ga. 343.
Miller v. Watt, 70 Ga. 385.
Langford v. Driver, 70 Ga. 588.
Wilson & Bro. v. White, 71 Fla. 506.
[7] White R. Canal Co. v. Dow, 1 Ind. 141.
Gharkey v. Halstead, 1 Ind. 289.
Hamilton v. Pearson, 1 Ind. 540.
Carter v. Hanna, 2 Ind. 45.
Adkins v. Homer, 2 Ind. 187.
Readington v. Julian, 2 Ind. 224.
Russell v. Branhain & Black, 1 Ind. 277.
Galbreath v. Doe, 8 Ind. 366; in 1851 a statute to the same effect was passed Gen. Laws 1851, R. 47.
[8] Thompson v. Blanchard, 2 Iowa, 44.
State v. Wilson, 8 Iowa, 411.
Kindskoff Bros. & Co. v. Malone, 9 Iowa, 541. After these decisions the same was embodied in a statute, Rev. 1860, Sec. 3079.
[9] Bernard v. Vignaud, 10 Martin, 637.
Bowman v. Flowers, 2 Martin (N. S.) 270.
Duplessis v. Kennedy, 6 La. 242.
Henneu v. Wetzel, 12 La. 265.
Le Bret v. Belzons. 13 La. 85.
Bonnefou v. Wiltz, 10 La. An. 675.
Pooche v. Le Blanc, 12 La. 778.
Ford v. Simmons, 13 La. 397.
Hale v. New Orleans, 13 La. 499.
[10] Nash v. Hunt, 116 Mass. 237.
Howard v. Hayward, 10 Met. 409.
Leathe v. Bullard, 8 Gray, 545.
Cox. v. Jackson, 6 Allen, 108.
Waters v. Gilbert, 2 Cush. 27.
Packer v. Lockman, 115 Mass. 72.
[11] Emery v. Vinall, 26 Me. 303.
Flidden v. Dunlap, 28 Me. 379.
Lee v. Oppenheimer, 34 Me. 181.
White v. Chadbourne, 41 Me. 149.
Baker v. Cooper, 57 Me. 388.
Staples v. Wellington. 58 Me. 453.
State v. Bowe, 61 Me. 171.
Decker v. Somerset Ins. Co., 66 Me. 406.
Harriman v. Sanger, 67 Me. 444.
[12] Rosenheim v. Am. Ins. Co., 33 Mo. 235.
Primm et. al. v. Raboteau et. al., 56 Mo. 412.
Margrave v. Ausmuss, 51 Mo. 561.
Roussin v. St. L. P. Ins. Co., 15 Mo. 247.
Fields v. Hunter, 8 Mo. 128.
H. & St. J. R. R. Co. v. Moore, 37 Mo. 341.
Miller v. Duff, 34 Mo. 167.
Knipper v. Bechtner, 32 Mo. 255.
[13] Hermann v. Jeffries, 4 Hedges, 522.
[14] Bunby v. Hyde, 50 N. H. 121.
[15] Moran v. Green, 21 N. J. L. 566.
Donnelly v. State, 26 N. J. L. 511.
Columbia & Del. Bridge Co. v. Grisse, 28 N. J. L. 44.
[16] Fountain v. Pettee, 38 N. Y. 185
Levin v. Russell, 42 N. Y. 255.
Jackson v. Cadwell, 1 Cowen, 639.
Atkins v. Elwell, 45 N. Y. 756.
Tooley v. Bacon, 70 N. Y. 37.
Stevens v. Brennan, 79 N. Y. 259.
[17] Brumble v. Brown, 79 N. C. 515.
[18] Motley v. Head, 43 Vt. 636.
[19] Farrell v. Alsop, 2 Wyoming, 140.

of cases is held in Alabama;[1] though see *contra;*[2] Connecticut;[3] Kansas;[4] Michigan;[5] Minnesota;[6] though see *contra;*[7] Mississippi;[8] Nebraska;[9] Tennessee;[10] Texas;[11] Wisconsin;[12] Utah;[13] Illinois.[14]

The States of Massachusetts and New York are classed as above because of *Waters* v. *Gilbert*, 2 Cush. 31, and *Fountain* v. *Pettie*, 38 N. Y. 186, which, together with *Harriman* v. *Sanger*, 67 Me. 444, hold a specific objection necessary, so that the other party may withdraw the objectionable evidence, and, if without other evidence upon the point, dismiss his suit or abandon his defense, and thus prevent further expense. This neces-

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1 Cunningham's Exrs. v. Cochran et al., 18 Ala. 480.
Davis v. State, 17 Ala. 415.
Lecroy v. Wiggins, 31 Ala. 19.
Pool v. Devers. 30 Ala. 675.
Phillips v. Kelly, 29 Ala. 632.
Gabriel v. State, 40 Ala. 357.
Saunders v. Knox, 57 Ala. 80.
2 Wallie v. Rhea et al., 10 Ala. 451.
Donnell v. Jones, 13 Ala. 507.
Goldsmith, Forchiemer & Co. v. Pickard, 27 Ala. 152.
3 Peck et al. v. New London Mu. Ins. Co., 22 Conn. 573.
State v. Green, 35 Conn. 203.
4 Walker v. Armstrong, 2 Ka. 226.
Luke v. Johnnycake, 9 Ka. 511.
K. C. R. R. Co. v. Pointer, 9 Ka. 627.
Marshall v. Shibley, 11 Ka. 114.
Ferguson Graves, 12 Ka. 39.
Willis v. Sproule, 13 Ka. 263.
Joseph v. Natl. Bk., 17 Ka. 260.
Cross v. Natl. Bk., 17 Ka. 388.
K. P. R. R. Co. v. Cutter, 19 Ka. 87.
Humphry v. Collins, 23 Ka. 549.
Osborn v. Woodford Bros., 31 Ka. 295.
Mo. Pa. R. R. Co. v. Morrow, 32 Ka. 219.
5 Ward v. Ward, 37 Mich. 259.
Kash v. Whitney, 4 Mich. 495.
Morrissy v. People, 11 Mich. 333.
Gilbert v. Kennedy, 22 Mich. 141.
Lobdell v. Merchants & Mnfrs.' Bk., 33 Mich. 408.
Wicks v. Ross, 37 Mich. 465.
Rogers v. Wells, 44 Mich. 411.
Jochen v. Tibbells, 50 Mich. 33.
Phippen v. Morehouse, 50 Mich. 538.
Mich. State Ins. Co. v. Soule, 51 Mich. 313.
Stevens v. Hope, 52 Mich. 66.
6 Gilbert v. Thompson, 14 Minn. 544.
Stearns v. Johnson, 17 Minn. 142.
Weide v. Davidson, 15 Minn. 327.
7 Califf v. Hillhouse, 3 Minn. 316.
8 Routh v. Agricl. Bk. Miss. 12 S. & M. 161.
Westling v. Noonan, 31 Miss. 599.
New Orleans, &c., R. R. Co. v. Moye, 39 Miss. 385.
Ketchum v. Brennan, 53 Miss. 577.
9 Horbach v. Miller, 4 Neb. 48.
Wilhelm v. Russell, 8 Neb. 122.
Stevenson v. Anderson, 12 Neb. 86.
10 Whitley v. Davis, 1 Swan, 333.
Taylor v. Mayhew, 11 Heisk, 598.
11 Cheatham v. Riddle, 8 Texas, 166.
Hagerty v. Scott, 10 Texas, 533.
Stiles v. Giddens, 21 Texas, 783.
Bohanan v. Hans, 26 Texas, 445.
12 Cornell v. Barnes, 26 Wis. 479.
State ex rel. v. Norton, 46 Wis. 337.
13 Wines v. Stevens, 1 Utah, 315.
14 Sargeant v. Kellogg, 5 Gil. 280.
Buntain v. Bailey, 27 Ill. 409.
Osgood v. Blackmore, 59 Ill. 262.
Wilson v. King, 83 Ill. 235.
Taylor v. Adams, 115 Ill. 570.

sity, or reason for a specific objection, exists in every possible case, and would require an objection to avail to be specific. It is submitted that the weight of authority is with the holdings of this court, and that every objection made by plaintiff in error comes within that doctrine.

And now, having considered all the questions that, we conceive, can arise upon the record, we respectfully submit that the able opinion of the learned court below, the result of much deliberation, should be given the most careful consideration, and that the judgment should be affirmed.

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